

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

- - -

Harry G. Beyoglides, Jr.,  
Special Administrator of the  
Estate of Robert Andrew  
Richardson, Sr., Deceased,  
Plaintiff,

vs.

Case No. 3:14-CV-00158

Phil Plummer/Montgomery County  
Sheriff, et al.,  
Defendants

- - -

PART I

DEPOSITION OF BRYAN CASTO, M.D.

the Witness herein, called by the Plaintiff under the applicable Rules of Civil Procedure, taken before me, Whitney Layne, a Notary Public for the State of Ohio, at the law firm of Dinkler & Pregon, 5335 Far Hills Avenue, Suite 117, Dayton, Ohio 45429 on December 7, 2015 at 2:26 p.m.

LAYNE & ASSOCIATES  
6723 COOPERSTONE DRIVE  
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614-309-1669

<p>1 APPEARANCES  2 NICHOLAS DICELLO, ESQUIRE  3 SPANGENBERG, SHIBLEY &amp; LIBER  4 1001 Lakeside Avenue  5 Suite 1700  6 Cleveland, Ohio 44114  7 on behalf of the Plaintiff  8 JAMEY PREGON, ESQUIRE  9 LYNNETTE DINKLER, ESQUIRE  10 DINKLER &amp; PREGON  11 5335 Far Hills Avenue  12 Suite 123  13 Dayton, Ohio 45429  14 on behalf of the Sheriff  15 Defendants  16 CARRIE STARTS, ESQUIRE  17 ROBERT HOJNOSKI, ESQUIRE  18 REMINGER CO., LPA  19 525 Vine Street  20 Suite 1700  21 Cincinnati, Ohio 45202  22 on behalf of the Defendants  23 NaphCare, Inc., Nurse Felicia Foster,  24 Nurse Jon Boehringer, Nurse Krisandra  Miles, Medic Steven Stockhauser,  and Brenda Garrett Ellis, M.D.  25</p>	<p>1 EXAMINATION INDEX  2 BRYAN CASTO, M.D.  3 BY MR. DICELLO.....Page 5  4 EXHIBIT INDEX  5 Exhibit Marked  6 1 .....Page 14  7 2 .....Page 14  8 3 .....Page 55  9 4 .....Page 77  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24</p>
Page 2	Page 4
<p>1 December 7, 2015  2 Monday Session  3 2:26 p.m.  4 - - -  5 STIPULATIONS  6 It is stipulated by and among counsel for the  7 respective parties that the deposition of BRYAN CASTO,  8 M.D., the Witness herein, called by the Plaintiff under  9 the applicable Rules of Civil Procedure, may be taken at  this time by the notary Whitney Layne; that said  deposition may be reduced to writing in stenotypy by the  notary, whose notes thereafter may be transcribed out of  the presence of the witness; and that the proof of the  official character and qualification of the notary is  waived.</p>	<p>1 BRYAN CASTO, M.D.  2 Being first duly sworn, as hereinafter  3 certified, deposes and says as follows:  4 CROSS-EXAMINTION  5 BY MR. DICELLO:  6 Q Good afternoon.  7 A Good afternoon.  8 Q Could you please state your name and spell your  last name, Doctor?  9 A Bryan Douglas Casto. Last name is C-A-S-T-O.  10 Q Dr. Casto, my name is Nick DiCello. We had a  chance to meet off the record. You understand you're here  11 to have your deposition taken today?  12 A Correct.  13 Q I presume you've been deposed a number of times  before?  14 A Correct.  15 Q And by way of introduction, I think you  probably understand, but you understand you're here to  have your deposition taken in connection with the death of  16 Robert Richardson?  17 A That's right.  18 Q And you understand that I'm an attorney who  represents the family and the estate of Robert Richardson</p>

<p>1       <b>in a lawsuit that's been filed against the Montgomery 2       County Sheriff and some other individuals?</b></p> <p>3       A   Yes.</p> <p>4       <b>Q   Do you understand that?</b></p> <p>5       A   Yes.</p> <p>6       <b>Q   Doctor, you and I have never met before today; 7       correct?</b></p> <p>8       A   That's correct.</p> <p>9       <b>Q   And you and I have never had the opportunity to 10      speak before today; correct?</b></p> <p>11      A   Correct.</p> <p>12      <b>Q   And it's your understanding that I have been 13      prohibited from contacting you about the death of 14      Mr. Richardson; true?</b></p> <p>15      A   No, I -- I speak to all parties if they're -- 16      if they call or want to set up an appointment.</p> <p>17      <b>Q   Because that's how the public coroner's office 18      works; right?</b></p> <p>19      A   That's right.</p> <p>20      <b>Q   And I've had experience with some of your 21      fellow coroners down there, for example, I met at your 22      office with Dr. Russell Uptegrove when I had a question 23      about a death of the member of the community, and he 24      invited me down to come speak with him. Is that</b></p>	<p>1       A   I would not know if that kind of tactic is 2       being used. That would be outside my knowledge.</p> <p>3       BY MR. DICELLO:</p> <p>4       <b>Q   Okay.</b></p> <p>5       A   I'm not usually told not to talk to someone, so 6       --</p> <p>7       <b>Q   Oh, all right.</b></p> <p>8       A   And I wasn't told that in your case.</p> <p>9       <b>Q   Well, that is what I was told. Is Ms. Dinkler 10      your lawyer?</b></p> <p>11      MS. DINKLER: Objection to form.</p> <p>12      Go ahead.</p> <p>13      A   I do not have an attorney. I understand she's 14      representing the county. I am here at the request of a 15      deposition regarding this case.</p> <p>16      BY MR. DICELLO:</p> <p>17      <b>Q   So you don't have an attorney so you haven't 18      had any attorney/client communications with any counsel; 19      correct?</b></p> <p>20      A   Oh, no.</p> <p>21      MS. DINKLER: Objection to form. He's an 22      employee of the county and he does have attorney/client 23      privilege with this firm and the civil department of the 24      prosecutor's office in the civil litigation.</p>
Page 6	Page 8

<p>1 record that was not his official file and he was not      2 requested to bring a file formally or informally. And      3 we've provided you with the report that he produced.      4 BY MR. DICELLO:  <b>Q My question was just: You brought a file with you today; correct?</b>      7 A Yes.  <b>Q What was in that file?</b>      9 MS. DINKLER: Objection to form.      10 I'm not going to instruct you not to answer      11 because the contents are privileged other than what's been      12 placed on the table.      13 THE WITNESS: Okay.      14 BY MR. DICELLO:  <b>Q So are you going to follow Ms. Dinkler's legal advice to you, Doctor?</b>      17 MS. DINKLER: As an employee of the county,      18 Dr. Casto, this is not a criminal case, this is a civil      19 case, and you do have an attorney/client privilege      20 communication privilege with the county. And I'm      21 instructing you not to answer his question.      22 THE WITNESS: Okay.      23 BY MR. DICELLO:  <b>Q I have to ask and then she instructs you not to</b></p>	<p>1 off the record, that's fine. But I would just ask that      2 there's no more speaking objections.      3 Back to the question.      4 MS. DINKLER: We're treading here on very thin      5 ice given that a privilege is at stake. And I want      6 Dr. Casto to be crystal clear on the parameters of an      7 attorney/client privilege in this particular context. In      8 no way am I trying to suggest an answer to him.      9 Go right ahead.      10 BY MR. DICELLO:  <b>Q Because when you sat down, you told me you didn't have a lawyer and you didn't think you needed one.</b>  <b>But Ms. Dinkler has told you otherwise today; is that true?</b>      15 MS. DINKLER: That is true.      16 BY MR. DICELLO:  <b>Q You're supposed to be answering the questions, but Ms. Dinkler is answering them for you?</b>      19 A What's your question?  <b>Q Before you got here today, you didn't think you had a lawyer in this case, did you?</b>      22 MS. DINKLER: Objection.      23 A I know there was an attorney representing my      24 employer, Montgomery County.</p>
<p style="text-align: center;">Page 10</p>	<p style="text-align: center;">Page 12</p>

<p>1       <b>Q   Okay.</b></p> <p>2       A   Because I have a subpoena, you know, giving me</p> <p>3       some guidance. I don't recall having a subpoena in this</p> <p>4       case.</p> <p>5       <b>Q    Nope.</b></p> <p>6       A   I had no guidance. So I brought materials that</p> <p>7       I had used in preparation for today. But these are the</p> <p>8       materials from -- or the work product of our office.</p> <p>9       <b>Q   Okay. And just so --</b></p> <p>10      MR. DICELLO: Why don't we mark these.</p> <p>11      (Exhibit No. 1 marked for identification.)</p> <p>12      BY MR. DICELLO:</p> <p>13      <b>Q   Doctor, handing you what's been marked as</b></p> <p>14      <b>Plaintiff's Exhibit 1 with your name, your last name Casto</b></p> <p>15      <b>at the bottom. You reference this as part of your work</b></p> <p>16      <b>product. Can you identify what Plaintiff's Exhibit 1 is?</b></p> <p>17      MS. DINKLER: Objection to form.</p> <p>18      A   Yes. This is a photocopy of the signed autopsy</p> <p>19      report signed by me on Mr. Robert Richardson. Also, not</p> <p>20      attached but commonly would be attached or included in</p> <p>21      mailing of such a report is the toxicology report</p> <p>22      generated by our office but not by myself.</p> <p>23      BY MR. DICELLO:</p> <p>24      <b>Q   And then I'm going to hand you what's been</b></p>	<p>1       autopsy report, whatever, and then a property sheet</p> <p>2       detailing what property may have come with the decedent.</p> <p>3       And that's about it.</p> <p>4       <b>Q   Photographs?</b></p> <p>5       A   Photographs are also part of our product. They</p> <p>6       are in digital format. We retrieve them as needed.</p> <p>7       They're not printed photographs included in some files</p> <p>8       somewhere.</p> <p>9       <b>Q   I have a copy of some files that I know were</b></p> <p>10      <b>produced ultimately through your office. And I'm going to</b></p> <p>11      <b>show you those in a moment.</b></p> <p>12      A   Okay.</p> <p>13      <b>Q   But while we're on this topic, it makes sense</b></p> <p>14      <b>to ask you: Did you take any photographs of your internal</b></p> <p>15      <b>examination?</b></p> <p>16      A   I don't believe so, not in this case.</p> <p>17      <b>Q   And I only saw a single photograph of a --</b></p> <p>18      <b>looked like a large cross section of the heart. Do you</b></p> <p>19      <b>recall taking that photograph?</b></p> <p>20      A   Yes.</p> <p>21      <b>Q   What was the purpose of documenting that</b></p> <p>22      <b>photograph?</b></p> <p>23      A   That photograph is meant to be a pictorial</p> <p>24      representation of the decedent's dilated left ventricle.</p>
Page 14	Page 16
<p>1       <b>marked as Plaintiff's Exhibit 2 that has your last name</b></p> <p>2       <b>Casto underneath it.</b></p> <p>3       (Exhibit No. 2 marked for identification.)</p> <p>4      BY MR. DICELLO:</p> <p>5       <b>Q   First, is that something else that you brought</b></p> <p>6       <b>with you to the deposition?</b></p> <p>7       A   Yes.</p> <p>8       <b>Q   Is that what you're referring to when you say</b></p> <p>9       <b>"work product"?</b></p> <p>10      A   Correct.</p> <p>11      <b>Q   And can you tell us what Exhibit 2 is please?</b></p> <p>12      A   Exhibit 2 is a pair of investigative reports.</p> <p>13      The first and longer of the two is by Mr. Jim Fannin, one</p> <p>14      of our coroner investigators. The second of the two is</p> <p>15      actually an investigative note typed by myself.</p> <p>16      <b>Q   So what other documents do you have at the</b></p> <p>17      <b>coroner's office that would make up Mr. Richardson's file</b></p> <p>18      <b>that aren't here with you today?</b></p> <p>19      A   Common things in the file, and of course this</p> <p>20      is 2012, so now it's on microfiche so there's no paper</p> <p>21      file, would be things like fingerprint card, generally a</p> <p>22      log of requested items, so I'm sure everyone at this</p> <p>23      table, their requests are logged in there at some point,</p> <p>24      and requests, I'm saying requests of the photographs, the</p>	<p>1       <b>Q   Okay.</b></p> <p>2       A   And it's a common photograph that I do request</p> <p>3       be taken in cases such as this.</p> <p>4       <b>Q   In terms of your microscopic examination, did</b></p> <p>5       <b>you perform any photographs of any slides?</b></p> <p>6       A   No. That would not be a standard thing that we</p> <p>7       would do.</p> <p>8       <b>Q   All right. Did you preserve the slides</b></p> <p>9       <b>themselves?</b></p> <p>10      A   Oh, yes.</p> <p>11      <b>Q   And those are also back at the coroner's</b></p> <p>12      <b>office?</b></p> <p>13      A   That's right.</p> <p>14      <b>Q   And did you preserve any tissue samples in</b></p> <p>15      <b>paraffin?</b></p> <p>16      A   The blocks?</p> <p>17      <b>Q   The blocks, yeah.</b></p> <p>18      A   Tissue blocks in paraffin used to make the</p> <p>19      slides are saved for recut purposes.</p> <p>20      <b>Q   Okay.</b></p> <p>21      A   We do not release the original slides outside</p> <p>22      the office, because they tend to disappear or get damaged.</p> <p>23      And so when someone wants to review the microscopic</p> <p>24      evaluation, they will order recuts, and so we make new</p>
Page 15	Page 17

<p>1 slides from the same tissue blocks. If for some reason,    2 rarely, those recuts won't be representative of what was    3 in the original slides, then someone can make an    4 appointment, and I'll sit there as long as they want and    5 watch them look at the original slides.</p> <p>6     <b>Q Okay.</b></p> <p>7     A We provide a microscope in our conference room    8 to do that.</p> <p>9     <b>Q The options that you've just described, are    10 those things that you regularly offer to the public,    11 either taking recuts or inviting someone to come in and    12 look at the actual slides under a microscope?</b></p> <p>13     A The recuts are a common request, by attorneys    14 generally. Coming in to view the original slides is    15 always available. It tends not to be necessary, although    16 I have had it once or twice over the years.</p> <p>17     <b>Q And if somebody from my office makes that kind    18 of request for recuts or to look at the original slides    19 through Ms. Dinkler's office, would you accommodate those    20 requests?</b></p> <p>21     A Sure.</p> <p>22     MS. DINKLER: For the record, I've already    23 offered all of that to you.</p> <p>24     BY MR. DICELLO:</p>	<p>1     <b>to do that?</b></p> <p>2                 MS. DINKLER: Objection to form.</p> <p>3                 If you don't know what I've told him, then --</p> <p>4                 A Right. I have no opinion about what you've    5 been told or not told to do as far as regarding contacting    6 me.</p> <p>7     BY MR. DICELLO:</p> <p>8     <b>Q As the coroner whose job it is to meet with    9 members of the public, representatives on behalf of    10 deceased family members, that kind of thing, have you ever    11 encountered a situation where the representative of a    12 decedent is prohibited from going down to your office and    13 sitting down with you and having you go over the causes of    14 death?</b></p> <p>15     MS. DINKLER: Objection to form.</p> <p>16     A Well, again, I probably would never know that,    17 just like in this case, if that restriction has been made    18 prior to them contacting me. And the reason I say that is    19 I get a voice mail, I call them back that day, and we    20 talk. So --</p> <p>21     BY MR. DICELLO:</p> <p>22     <b>Q Good.</b></p> <p>23     A Do you see what I'm saying?</p> <p>24     <b>Q I do.</b></p>
<p style="text-align: center;">Page 18</p>	<p style="text-align: center;">Page 20</p>

<p>1 A Once again, to my knowledge, it's the only 2 case. 3 BY MR. DICELLO: 4 Q That's all I'm asking. 5 A But it doesn't mean it's the only case, because 6 I would not know about those -- 7 Q Okay. 8 A -- prohibitions and all that. 9 Q Do you have any understanding why that 10 prohibition exists in this case and it's never existed in 11 any others that you're aware of? 12 MS. DINKLER: Objection to form, calls for 13 legal conclusion. 14 A Yeah, I would not have an interest in answering 15 that. I don't know what you're -- I'm not an attorney, so 16 I don't know why that is. 17 BY MR. DICELLO: 18 Q Well, let me start off, Doctor, just by setting 19 some rules on the record. I know you've been through this 20 plenty of times, but it helps to have them all right there 21 on the transcript. You have to answer audibly; shrugs and 22 uh-huhs and huh-uhs are hard to take down. As you have 23 done, please wait for me to finish my question, I'll wait 24 for you to finish your answer, and we'll get a clear</p>	<p>1 Q Can you tell me what you reviewed? 2 A I reviewed some medical records of Robert 3 Richardson. 4 Q Can we do this one at a time? It might be 5 faster. 6 A Sure. 7 Q I'll make sure you get out all of your answer, 8 Doctor. But what medical records did you review of 9 Mr. Richardson in advance of today's deposition? 10 A I believe one item was generated by the jail 11 healthcare professionals themselves -- 12 Q Okay. 13 A -- regarding -- on the day of his death. The 14 other medical record I reviewed was actually from I think 15 an admission in -- or an ER, a couple ER visits in 2010 16 regarding pain of varying types. 17 Q Any other medical records that you reviewed? 18 A Not to my knowledge. 19 Q Doctor, did you review either of the two sets 20 of medical records you just described at any time prior to 21 completing your postmortem examination? 22 A As far as generating the report? 23 Q Correct. 24 A Most likely I did, yes.</p>
<p style="text-align: center;">Page 22</p>	<p style="text-align: center;">Page 24</p>

<p>1 practice, more likely than not you would have reviewed the  2 records that you reviewed in anticipation of today's  3 deposition before you completed the autopsy report?  4 A That's correct.  5 Q And would there be documentation somewhere in  6 your file of having received or reviewed these medical  7 records?  8 A No.  9 Q So you told me what medical records you  10 reviewed. Back to my question. What else did you review  11 to prepare for today's deposition?  12 A Okay. I do remember reviewing corrections  13 officers' reports or accounts of the event on the date of  14 Mr. Richardson's death. I don't remember the content of  15 those reports, but I do recall reading multiple  16 corrections officers' statements.  17 Q Again, maybe one at a time. I promise I think  18 it's going to be faster.  19 A Sure.  20 Q Who provided you with those CO accounts?  21 A Probably our -- our investigator.  22 Q Mr. Fannin?  23 A Yes. And he would have acquired them I'm sure  24 from the jail.</p>	<p>1 happened to Mr. Richardson?  2 A I don't recall.  3 Q Let me just follow up. As you sit here today,  4 you recall reviewing correction officer statements; true?  5 A Uh-huh.  6 Q Yes?  7 A Yes.  8 Q As you sit here today, you don't recall having  9 reviewed any detainee eyewitness accounts; correct?  10 A I just don't recall. I would do that, and I  11 have done that in other jail deaths, and I just cannot --  12 I don't want to confuse it with this case, so I'm not sure  13 about that.  14 Q So your best answer --  15 A But that would be a common thing for me to do.  16 Q So I think, did you mean to say that you  17 reviewed the correction officer accounts before issuing  18 the report and then you reviewed them again before today's  19 deposition?  20 MS. DINKLER: Objection.  21 Go ahead.  22 A I have not reviewed them a second time.  23 BY MR. DICELLO:  24 Q All right.</p>
<p style="text-align: center;">Page 26</p>	<p style="text-align: center;">Page 28</p>

<p>1 Q And do you remember the format -- I'm going to  2 show you what is Plaintiff's Exhibit 1, doesn't have your  3 name underneath it. But kind of going through this, does  4 this appear to be the format that you read the corrections  5 officers' statements?  6 A I do not remember that kind of detail, no.  7 Q The accounts of the correction officers that  8 you believe you reviewed before issuing your autopsy  9 report, are those documents that you would maintain in  10 your record for this case?  11 A No.  12 Q So those would also be destroyed?  13 A That's right.  14 Q Is there any documentation anywhere in your  15 files that show which correction officers' accounts you  16 reviewed?  17 A No.  18 Q Do you know whether you reviewed all of them or  19 some of them?  20 A I would have reviewed -- We would have  21 requested all of them and I would have reviewed all of the  22 ones that I received.  23 Q Did you receive any narrative statements on  24 behalf of detainees who claim to have witnessed what</p>	<p>1 A They have not been provided to me.  2 Q What other documents have you reviewed to  3 prepare for today's deposition?  4 A Mainly the medical literature regarding  5 restraint-type deaths.  6 Q Can you cite any of it to me, either by  7 citation or just source, Doctor?  8 A I can probably just tell you some authors.  9 Q Sure.  10 A Di Maio.  11 Q Oh, boy. Okay.  12 A Hollaran.  13 Q How are we spelling Hollaran?  14 A H-O-L-L-A-R-A-N, I think. Chan, C-H-A-N, I  15 believe. Reay, R-A-E-Y-E (sic), I believe. And then  16 there's others that I do not recall names.  17 Q Dr. Vincent Di Maio; correct?  18 A Correct.  19 Q He's a frequently used defense expert; you  20 understand that?  21 MS. DINKLER: Objection to form.  22 A Actually, I'm not familiar with that part of  23 his career.  24 BY MR. DICELLO:</p>
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<p>1       <b>Q Okay.</b></p> <p>2       A I'm more interested in his writings while he</p> <p>3       was practicing forensic pathology prior to his defense</p> <p>4       career.</p> <p>5       <b>Q Did you do anything to evaluate the potential</b></p> <p>6       <b>bias that Dr. Di Maio may have?</b></p> <p>7       MS. DINKLER: Objection to form; assumes facts</p> <p>8       not in evidence.</p> <p>9       Go ahead.</p> <p>10      A Well, maybe it's just me, but I assume there's</p> <p>11      bias in every, even the best planned research paper or</p> <p>12      text. So I read things knowing that there's bias there.</p> <p>13      BY MR. DICELLO:</p> <p>14      <b>Q Were you aware that Dr. Di Maio has published</b></p> <p>15      <b>and authored a book entitled Excited Delirium?</b></p> <p>16      A I have the book.</p> <p>17      <b>Q How long have you had Dr. Di Maio's book</b></p> <p>18      <b>Excited Delirium?</b></p> <p>19      A Years.</p> <p>20      <b>Q Are you a doctor who is in the camp of doctors</b></p> <p>21      <b>who believe excited delirium is a legitimate diagnosis?</b></p> <p>22      A Yes.</p> <p>23      <b>Q It's not a diagnosis that applies to</b></p> <p>24      <b>Mr. Richardson; correct?</b></p>	<p>1       to make sure I understand what you're asking.</p> <p>2       <b>Q Yeah, I'll do my best. Not sure if I'll</b></p> <p>3       <b>rephrase it or just repeat it.</b></p> <p>4       A Okay.</p> <p>5       <b>Q To a reasonable degree of medical certainty,</b></p> <p>6       <b>can you tell us that Mr. Richardson died from excited</b></p> <p>7       <b>delirium?</b></p> <p>8       MS. DINKLER: Objection to form, lacks</p> <p>9       foundation.</p> <p>10      Go ahead.</p> <p>11      A Well, my opinion on the report I would place in</p> <p>12      the category of reasonable medical certainty.</p> <p>13      BY MR. DICELLO:</p> <p>14      <b>Q Sure.</b></p> <p>15      A And does it use the term "excited delirium?"</p> <p>16      No, it does not. Is there anything in my report that</p> <p>17      would counter the argument that this could be an excited</p> <p>18      delirium death? No, there is not. And so when you ask me</p> <p>19      have I ruled that out, I would say no, because there's</p> <p>20      nothing in my written opinion that would prevent someone</p> <p>21      from saying, "Hey, this could fall under the camp of</p> <p>22      excited delirium in some way." And I would say, "I can</p> <p>23      see your opinion on that."</p> <p>24      <b>Q Okay.</b></p>
<p style="text-align: center;">Page 30</p>	<p style="text-align: center;">Page 32</p>

<p>1       A It may or may not.</p> <p>2       <b>Q Okay.</b></p> <p>3       A I did not use that diagnosis in my report as --</p> <p>4       as you know.</p> <p>5       <b>Q And in coming to conclusions about the cause of</b></p> <p>6       <b>death to a reasonable degree of medical certainty, you</b></p> <p>7       <b>excluded excited delirium as a cause from your report;</b></p> <p>8       <b>correct?</b></p> <p>9       A I would not say that.</p> <p>10      <b>Q So did Mr. Richardson die from excited</b></p> <p>11      <b>delirium?</b></p> <p>12      A I do not know. I would not argue with someone</p> <p>13      if they wanted to place him in that category.</p> <p>14      <b>Q Well, let me put it this way, Doctor. To a</b></p> <p>15      <b>reasonable --</b></p> <p>16      MS. DINKLER: Hold on.</p> <p>17      Were you finished?</p> <p>18      THE WITNESS: Yeah.</p> <p>19      BY MR. DICELLO:</p> <p>20      <b>Q If you're not, just let me know.</b></p> <p>21      <b>To a reasonable degree of medical certainty,</b></p> <p>22      <b>can you tell us that Mr. Richardson died from excited</b></p> <p>23      <b>delirium?</b></p> <p>24      A Why don't you rephrase that question? I want</p>	<p>1       A I did not use that term in my report.</p> <p>2       <b>Q Why not?</b></p> <p>3       A I don't know. It's three years ago, or three</p> <p>4       and a half years ago. I don't -- probably wouldn't</p> <p>5       accurately recall the exact logic I was using. But the</p> <p>6       way I phrased it seems to be logical, seems to be</p> <p>7       understandable, and accurate, and easy for someone to</p> <p>8       understand. Putting down "excited delirium" as the term</p> <p>9       itself being the cause of death I think can create a lot</p> <p>10      of misunderstandings, a lot of confusion for families and</p> <p>11      attorneys. And so I did not use that term in this case.</p> <p>12      <b>Q If it was your conclusion to a reasonable</b></p> <p>13      <b>degree of medical certainty that Mr. Richardson died from</b></p> <p>14      <b>excited delirium, you would be obligated to put that in</b></p> <p>15      <b>your report; true?</b></p> <p>16      A The term "excited delirium" is just someone's</p> <p>17      term, okay? Chosen phrase. But it really refers to more</p> <p>18      of a physiology or mechanism. And so I don't feel</p> <p>19      obligated to use that term. I don't feel obligated to use</p> <p>20      the exact terminology of Vincent Di Maio or any of these</p> <p>21      other authors I've read.</p> <p>22      My goal when I'm generating a report, whether</p> <p>23      it's this case or a straightforward heart attack, is that</p> <p>24      it be a working report that someone can understand and</p>
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<p>1       that I can understand years later when I'm in this  2       situation. And so I have phrased it in that way.  3           But my unwillingness in 2012 to use the term  4       "excited delirium" as the cause of death opinion, again,  5       in my mind, does not rule that diagnosis out just because  6       I didn't use the term.</p> <p>7       <b>Q   Have you ever used that term in an autopsy report?</b></p> <p>9       A   I have probably once or twice, generally in  10      parentheses after saying something like this.</p> <p>11      <b>Q   Okay.</b></p> <p>12      A   Again, just trying to be clear in those  13      circumstances.</p> <p>14      <b>Q   Excited delirium as a diagnosis is not 15      recognized by the American Medical Association, is it?</b></p> <p>16      A   Well, I don't know what the American Medical  17      Association recognizes. I find myself at odds with them  18      on a lot of things.</p> <p>19      <b>Q   You find yourself at odds with the AMA on a lot 20      of things?</b></p> <p>21      A   Well, I'm saying political. But I do not know  22      what they recognize as a legitimate diagnosis or not.  23      It's a -- That changes all the time, what they recognize  24      and what they don't recognize.</p>	<p>1       <b>Q   Okay.</b>  2       A   -- like the DSM IV for something like forensic  3       pathology.</p> <p>4       <b>Q   For the reasons I think you've tried to explain 5       for us, you did not include excited delirium anywhere in 6       your autopsy; correct?</b></p> <p>7       MS. DINKLER: Asked and answered.</p> <p>8       A   Correct.</p> <p>9       BY MR. DICELLO:</p> <p>10      <b>Q   And the term "excited delirium" doesn't appear 11      on any work product that you generated in connection with 12      Mr. Richardson's death; correct?</b></p> <p>13      A   Correct.</p> <p>14      <b>Q   Excluding any conversations you've had with 15      your attorneys in this case, have you ever suggested to 16      anyone that Mr. Richardson died from excited delirium?</b></p> <p>17      MS. DINKLER: Objection to form.</p> <p>18      Go ahead.</p> <p>19      A   No.</p> <p>20      BY MR. DICELLO:</p> <p>21      <b>Q   The medical literature that you've told me you 22      reviewed in advance of today's deposition, did you review 23      that medical literature prior to issuing your autopsy 24      report in June of 2012?</b></p>
<p style="text-align: center;">Page 34</p>	<p style="text-align: center;">Page 35</p>

<p>1 question?</p> <p>2 Q I'm just trying to understand what textbooks</p> <p>3 did you review versus what articles did you look at?</p> <p>4 MS. DINKLER: And this is in what time period?</p> <p>5 BY MR. DICELLO:</p> <p>6 Q Prior to issuing your autopsy.</p> <p>7 A Oh, okay.</p> <p>8 MS. DINKLER: So before. Before the autopsy.</p> <p>9 A 2012, I would not be able to recall the exact</p> <p>10 writings I reviewed at that time.</p> <p>11 BY MR. DICELLO:</p> <p>12 Q And how about in advance of today's deposition?</p> <p>13 Can you tell me which texts versus which articles?</p> <p>14 A Di Maio's Handbook of Forensic Pathology as</p> <p>15 well as his main forensic pathology text, I think it's</p> <p>16 just called Forensic Pathology. Excited Delirium text I</p> <p>17 read years ago. I have not referred to that recently.</p> <p>18 Q So that's the only texts you reviewed, were --</p> <p>19 A No, Spitz and Fisher, Medicolegal Death</p> <p>20 Investigation, I reviewed that.</p> <p>21 Q Spitz and Fisher, you regard those authors as</p> <p>22 reliable sources?</p> <p>23 A Well, you know, I'm asked that question all the</p> <p>24 time.</p>	<p>1 Q How did you access these articles?</p> <p>2 A Through the internet.</p> <p>3 Q And what portal or source do you use?</p> <p>4 A Multiple. I would not -- You mean like what</p> <p>5 search engine, or --</p> <p>6 Q Yeah.</p> <p>7 A I just Google, or MEDLINE.</p> <p>8 Q MEDLINE?</p> <p>9 A Yeah.</p> <p>10 Q What were your search terms?</p> <p>11 A Probably just restraint to deaths, restraint</p> <p>12 asphyxia, prone or hog-tie positions. That's probably</p> <p>13 about it. Where I got most of those.</p> <p>14 Q Did you print any of these articles out?</p> <p>15 A Yes.</p> <p>16 Q And where are those articles?</p> <p>17 A Several of them are right in there.</p> <p>18 Q Okay. Can you retrieve those for me, please?</p> <p>19 MS. DINKLER: Are you wanting to take a break?</p> <p>20 MR. DICELLO: Sure.</p> <p>21 (Recess taken.)</p> <p>22 BY MR. DICELLO:</p> <p>23 Q We're back on the record, Doctor, after you</p> <p>24 were kind enough to go retrieve the medical literature</p>
<p style="text-align: center;">Page 38</p>	<p style="text-align: center;">Page 40</p>

<p>1   <b>was going to remove all of the documents in there that</b>    2   <b>were subject to some kind of attorney/client privilege.</b>    3   <b>Were you instructed to look at the medical literature by</b>    4   <b>counsel?</b></p> <p>5           MS. DINKLER: Objection to form. If he were,    6   he is instructed not to answer, because it would be    7   attorney/client privilege. He did not bring an official    8   file, nor was he commanded to bring a file. He brought a    9   folder that is of no, quote, unquote, "title," it's not an    10   official folder from anything. He has -- He is going to    11   be identified not only as a lay witness but as an expert    12   witness. There are protections to work product and    13   privilege. It is those protections I was relying upon    14   with regard to the file.</p> <p>15   BY MR. DICELLO:</p> <p>16   <b>Q   Did anybody instruct you to go find that</b>    17   <b>medical literature or did you do that on your own?</b></p> <p>18   MS. DINKLER: Objection to form.</p> <p>19   You can't testify to anything that I told you,    20   but you can testify to things that I didn't tell you.</p> <p>21   A   No. Just my typical preparation for a    22   deposition. It has nothing to do with someone telling me    23   to look up an article or review the literature.</p> <p>24   BY MR. DICELLO:</p>	<p>1   <b>two?</b></p> <p>2           A   Quarter inch, half inch.</p> <p>3   <b>Q   All right.</b></p> <p>4           MS. DINKLER: There's six documents being    5   copied for you that are his literature. On top of that,    6   there was communication from my office, which I saw. And    7   I saw this. I did not thumb through everything that was    8   in the folder. He was not asked to bring a folder. He    9   was not subpoenaed to bring a folder. I've given you    10   Exhibits 1 and 2. You're getting the medical literature,    11   which I was not aware he relied upon, he was not commanded    12   to bring anything, and the communications from my office    13   are not being produced.</p> <p>14   BY MR. DICELLO:</p> <p>15   <b>Q   Doctor, other than any correspondence from</b>    16   <b>Ms. Dinkler's office, what was in your file you brought</b>    17   <b>with you to the deposition? I'm sorry we're taking so</b>    18   <b>much time on this.</b></p> <p>19   A   That's okay. These two documents.</p> <p>20   <b>Q   Referring to Exhibits 1 and 2 for the Casto?</b></p> <p>21   A   That's correct.</p> <p>22   <b>Q   Okay.</b></p> <p>23   A   The literature that I think they're making a    24   copy of.</p>
<p style="text-align: center;">Page 42</p>	<p style="text-align: center;">Page 44</p>

<p>1 MS. DINKLER: Well, you refer to this, Nick,      2 and I'm not trying to be difficult or get off on a bad      3 foot, but you refer to this as a file that the doctor was      4 commanded to bring.</p> <p>5 MR. DICELO: He called it a file.</p> <p>6 MS. DINKLER: That's not it.</p> <p>7 MR. DICELO: I didn't say I commanded him. I      8 said, "Doctor, is that your file" and he goes, "yeah,      9 that's my file."</p> <p>10 THE WITNESS: It's a manilla folder.</p> <p>11 MS. DINKLER: It's a folder. It's not a file,      12 quote, unquote.</p> <p>13 MR. DICELO: Okay.</p> <p>14 BY MR. DICELO:</p> <p><b>Q So the manilla folder you brought with you. I'm not trying to make this something it's not.</b></p> <p>17 A Yeah, it's a manilla folder with paper in it.      18 When you say "file," that's what I --</p> <p>19 BY MR. DICELO:</p> <p><b>Q That's what I meant.</b></p> <p>21 A We've already talked about the official file at      22 the coroner's office.</p> <p>23 MS. DINKLER: I have produced the official      24 file, in discovery, of the coroner's office so that we</p>	<p>1 <b>fellowship in forensic pathology?</b></p> <p>2 A 2004.</p> <p>3 Q <b>In 2004, where did you go to practice forensic pathology?</b></p> <p>5 A Stayed at the place of my fellowship, at      6 Montgomery County Coroner's Office.</p> <p>7 Q <b>What is your position at the coroner's office?</b></p> <p>8 A I'm one of the deputy coroners for the      9 pathologist. I'm also the Director of Operations, which      10 basically means I'm in charge of the morgue, the      11 investigations, and photography.</p> <p>12 Q <b>Is that a full-time position ever since you've been employed with the Montgomery County Coroner's Office after your fellowship?</b></p> <p>15 A Yes.</p> <p>16 Q <b>Have you held any other professional jobs or positions where you've been practicing forensic pathology, other than Montgomery County Coroner's Office?</b></p> <p>19 A I did some --</p> <p>20 THE WITNESS: I'm sorry.</p> <p>21 MS. DINKLER: Pass that down to the court      22 reporter.</p> <p>23 THE WITNESS: Okay.</p> <p>24 BY MR. DICELO:</p>
<p style="text-align: center;">Page 46</p>	<p style="text-align: center;">Page 48</p>

<p>1 were prepared for today.</p> <p>2 BY MR. DICELO:</p> <p><b>Q Well, Doctor, I appreciate you bringing those materials in your manilla folder and, hopefully, we'll get this sorted out sooner rather than later.</b></p> <p>6 But while we're waiting for the materials from your manilla folder that you brought with you, let me see if I can get some information about your background a little bit, Doctor.</p> <p>10 A Okay.</p> <p><b>Q When did you become licensed to practice forensic pathology?</b></p> <p>13 A Well, I got an Ohio training license during my fellowship, and probably my permanent license somewhere around 2002.</p> <p><b>Q Are you licensed to practice medicine in the State of Ohio?</b></p> <p>18 A Yes.</p> <p><b>Q Any other states?</b></p> <p>20 A Indiana.</p> <p><b>Q How long have you been practicing forensic pathology in Ohio?</b></p> <p>23 A Including my fellowship years? Since 2002.</p> <p><b>Q And when was it that you completed your</b></p>	<p>1 <b>Answer this question and then we'll be able to move on to the documents.</b></p> <p>3 A Okay. Repeat it.</p> <p>4 Q <b>It sounds to me like you had a fellowship in forensic pathology at Montgomery County Coroner's Office, and then you said, I stayed there for my employment and I've been practicing forensic pathology there as a deputy county coroner and some other things you described since 2004. My question is: Have you had any other professional positions outside of your employment history with Montgomery County where you've practiced forensic pathology?</b></p> <p>13 A For pay or just any --</p> <p>14 Q <b>Let's start with the for pay.</b></p> <p>15 A Okay. I have done some medical/legal consultation for a local attorney in Dayton for about a year and a half.</p> <p>18 Q <b>You said -- Did you say a local attorney?</b></p> <p>19 A Uh-huh.</p> <p>20 Q <b>Who was that?</b></p> <p>21 A Dwight Brannon.</p> <p>22 Q <b>Dwight Brannon?</b></p> <p>23 A Correct.</p> <p>24 Q <b>What kind of law does Mr. Brannon practice?</b></p>
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<p>1 MS. DINKLER: Objection.      2 If you know.      3 A I do not know.      4 BY MR. DICELLO:      5 Q Well, what kind of cases was Mr. Brannon having      6 you review?      7 A They were medical-legal, medical malpractice      8 cases, I guess. But I do not know if that's the limit of      9 his practice.      10 Q Was Mr. Brannon representing plaintiffs or the      11 defendants?      12 A I do not know.      13 Q Do you know if he was representing a healthcare      14 provider or a patient?      15 A I do not know.      16 Q Did you issue any reports in connection with      17 any cases Mr. Brannon retained you on?      18 A Yes.      19 Q How many times, approximately, did Mr. Brannon      20 retain you for medical/legal consultation?      21 A Probably ten cases probably.      22 Q Ten cases all within that -- how long did you      23 say, about --      24 A Year and a half.</p>	<p>1 A Oh, I had no idea about that.      2 Q Would that have represented any kind of      3 conflict for you as a coroner --      4 MS. DINKLER: Objection.      5 BY MR. DICELLO:      6 Q -- if Mr. Brannon, someone from Dwight      7 Brannon's office researched Mr. Richardson?      8 MS. DINKLER: Objection to form, time, and      9 scope. No foundation.      10 A Well, I work with attorneys that I know all the      11 time, so --      12 BY MR. DICELLO:      13 Q Sure.      14 A No, I cannot see that that would be a problem.      15 Q All right. I presume you were an independent      16 contractor?      17 A Correct.      18 Q And did you have any kind of incorporated      19 business that these medical/legal evaluation consultation      20 fees were paid into, or was it just --      21 A No.      22 Q -- you personally?      23 A Personally.      24 Q All right. Have you reviewed any cases for any</p>
<p style="text-align: center;">Page 50</p>	<p style="text-align: center;">Page 52</p>

<p>1 Q Year and a half? Yes?      2 A Yes.      3 Q Were you ever deposed in connection with those      4 cases?      5 A I believe in one case.      6 Q Did you ever testify at trial in any of those      7 cases?      8 A Prepared to, but it settled.      9 Q What was the name of the case you were deposed      10 in if you remember?      11 A I do not know.      12 Q Did it involve any issues that are at issue      13 similar to Mr. Richardson's death?      14 A No. It was a natural death, it was a cardiac      15 death.      16 Q Were you providing causation opinions?      17 A Yes. Most of my work with Mr. Brannon was as a      18 screener to direct him, reviewing records and directing      19 him, hey, I don't think there's anything here, or he would      20 ask me specific questions about issues on particular      21 cases.      22 Q Sure. Did you have an understanding that at      23 some point in time someone from Mr. Brannon's office      24 represented Robert Richardson?</p>	<p>1 other attorneys other than Mr. Brannon?      2 A No.      3 Q It sounds to me that you did that for about a      4 year and a half; correct?      5 A Correct.      6 Q From when to when?      7 A I do not know. It's been within the past six      8 years probably.      9 Q And it sounds to me like you stopped doing that      10 at some point?      11 A That's right.      12 Q What were the circumstances surrounding you no      13 longer doing that kind of work?      14 A He sued our office.      15 Q Mr. Brannon sued the coroner?      16 A That's right.      17 Q Okay. Why did Mr. Brannon sue the coroner's      18 office?      19 A A case unrelated to me. And of course that      20 created hard feelings, so I offered to stop working for      21 Mr. Brannon.      22 Q Have you ever -- Were you a named defendant in      23 that case?      24 A No, no.</p>
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<p>1       <b>Q Okay.</b></p> <p>2       A I had no connection to the case. It was a 3       separate issue.</p> <p>4       <b>Q Have you ever worked for any other attorneys in</b> 5       <b>medical/legal expert review?</b></p> <p>6       MS. DINKLER: Asked and answered.</p> <p>7       Go ahead.</p> <p>8       A No.</p> <p>9       BY MR. DICELLO:</p> <p>10      <b>Q So you were telling me what other kind of</b> 11      <b>professional employment you've had as a forensic</b> 12      <b>pathologist outside of Montgomery County. You told me</b> 13      <b>about the medical/legal reviews for Mr. Brannon. Anything</b> 14      <b>else?</b></p> <p>15      A Everything else has been volunteer lectures, 16      Wright State School of Medicine, local forensic meetings.</p> <p>17      <b>Q I did receive a copy of your CV. I don't know</b> 18      <b>if it's updated or not. But it does show some research</b> 19      <b>experience. Let me ask you: Have you been published in</b> 20      <b>any peer review journals?</b></p> <p>21      A Yes.</p> <p>22      <b>Q And have you published in any peer review</b> 23      <b>journals on any of the topics that are at issue in</b> 24      <b>Mr. Richardson's death?</b></p>	<p>1       <b>deposition that you didn't look at before you issued your</b> 2       <b>autopsy?</b></p> <p>3       MS. DINKLER: Objection to form.</p> <p>4       A Well, it's hard -- hard to answer that, because 5       I don't recall exactly what I reviewed back in 2012.</p> <p>6       BY MR. DICELLO:</p> <p>7       <b>Q When did you retrieve this information? It</b> 8       <b>looks like this was all off the internet. When did you</b> 9       <b>retrieve the documents that are contained in Exhibit 3?</b></p> <p>10      A Last week, I believe.</p> <p>11      <b>Q Have you read all of this?</b></p> <p>12      A Yes.</p> <p>13      <b>Q So between last week and today, you read what</b> 14      <b>is Exhibit 3?</b></p> <p>15      A That's correct.</p> <p>16      <b>Q Doctor, how many autopsies have you performed?</b></p> <p>17      A About 3,700 at this point.</p> <p>18      <b>Q And you were the lead forensic pathologist on</b> 19      <b>all 3,700 of those?</b></p> <p>20      A Yes.</p> <p>21      <b>Q How many autopsies have you performed that</b> 22      <b>involved folks who died at the Montgomery County Jail?</b></p> <p>23      A We do not have an easy way of searching that on 24      our computer system. But jail deaths as a group are not</p>
Page 54	Page 56

<p>1      <b>at the hands of corrections officers?</b></p> <p>2      A    None.</p> <p>3      Q    <b>Zero?</b></p> <p>4      A    That's right.</p> <p>5      Q    <b>Including Mr. Richardson?</b></p> <p>6      A    Correct.</p> <p>7      Q    <b>How many have you found of the dozens of jail deaths that you've performed autopsies on, how many have you found were the result of an accident?</b></p> <p>10     A    Probably just a few.</p> <p>11     Q    <b>Including Mr. Richardson?</b></p> <p>12     A    Yes, correct.</p> <p>13     Q    <b>Are you a member of any professional organizations, Doctor?</b></p> <p>15     A    Yes.</p> <p>16     Q    <b>Can you list those for me?</b></p> <p>17     A    Yeah. Currently American Academy of Forensic Sciences and the National Association of Medical Examiners. In the past, numerous other general pathology organizations. I'm no longer current with those.</p> <p>21     Q    <b>Are you board certified in any specialty?</b></p> <p>22     A    No.</p> <p>23     Q    <b>Have you ever sought board certification?</b></p> <p>24     A    Yes.</p>	<p>1      A    No.</p> <p>2      Q    <b>Did you try again?</b></p> <p>3      A    No. And that would be for anatomic pathology is what we're talking about.</p> <p>5      Q    <b>Were the results of these written examinations published for you?</b></p> <p>7      A    Usually it's just a letter pass or fail.</p> <p>8      Q    <b>Does the letter indicate your score on the test, what section you didn't pass?</b></p> <p>10     A    No.</p> <p>11     Q    <b>Why was it that you were pursuing board certification in '04, '05, and '06?</b></p> <p>13     A    Well, board certification is desirable. Not only as a qualification, but also for compensation. It's not required --</p> <p>16     Q    <b>Understood.</b></p> <p>17     A    -- of me. But it is a desirable thing. And in my setting, you have to pass general pathology boards before you can even sit for forensic boards.</p> <p>20     Q    <b>Okay.</b></p> <p>21     A    So to gain access to forensic board certification, I needed to go through anatomic and clinical pathology. And so the three settings were all for anatomic.</p>
<p style="text-align: center;">Page 58</p>	<p style="text-align: center;">Page 60</p>

<p>1 A We receive something called a check sample.</p> <p>2 Q <b>What is that?</b></p> <p>3 A It's a -- Basically, a mail -- by mail</p> <p>4 publication. It may contain photographs, microscopic, it</p> <p>5 may not. It varies. It's usually geared towards a</p> <p>6 specific topic. And we go through those as a group at</p> <p>7 times, mainly for CME efforts.</p> <p>8 Q <b>Any other journals that you regularly receive?</b></p> <p>9 A No.</p> <p>10 Q <b>Ever heard of UpToDate, Doctor?</b></p> <p>11 A UpToDate?</p> <p>12 Q <b>Yeah.</b></p> <p>13 A No.</p> <p>14 Q <b>UpToDate is not a resource that you use in your practice?</b></p> <p>15 MS. DINKLER: Objection to form, lacks</p> <p>16 foundation.</p> <p>17 A No.</p> <p>18 BY MR. DICELLO:</p> <p>19 Q <b>Any other online resources that you regularly refer to or use in your practice?</b></p> <p>20 A Beyond just MEDLINE type searches?</p> <p>21 Q <b>MEDLINE is one?</b></p> <p>22 A Yeah, sure.</p>	<p>1 Examiners has forensic autopsy performance standards or</p> <p>2 guidelines that have been published.</p> <p>3 Q <b>Do you do your best to try to adhere to those?</b></p> <p>4 A Yes.</p> <p>5 Q <b>And do you have access to those in your office?</b></p> <p>6 A Yes.</p> <p>7 Q <b>Do you agree that in order to stay competent in your field of practice, a forensic pathologist has to stay current on the medical literature and research in his or her field?</b></p> <p>8 A You have to make an effort to learn new things,</p> <p>9 yes.</p> <p>10 Q <b>Okay. Do you consider yourself a public official?</b></p> <p>11 MS. DINKLER: Objection to form, calls for a</p> <p>12 legal conclusion.</p> <p>13 A When you say "official," I think of an elected</p> <p>14 official. I'm not an elected official. I'm a public</p> <p>15 employee.</p> <p>16 BY MR. DICELLO:</p> <p>17 Q <b>The coroner in Montgomery County, is that individual an elected position down here?</b></p> <p>18 A Yes, it is.</p> <p>19 Q <b>And is that who you report to, Dr.</b></p>
<p style="text-align: center;">Page 62</p>	<p style="text-align: center;">Page 64</p>

<p>1 A I would not work with a corrections officer on 2 a regular basis. It would be on a case-by-case, and 3 generally it would be only through their reports. 4 <b>Q What about anybody from the Montgomery County</b> 5 <b>Sheriff's Office? Do you know anybody in the sheriff's</b> 6 <b>office?</b> 7 A Oh, sure. Detectives mainly. 8 <b>Q Let me start just first personally. Are you</b> 9 <b>personally friends with any folks from the sheriff's</b> 10 <b>office?</b> 11 A Outside of work, do you mean? 12 Q Yeah. 13 A No. 14 Q And then through your professional activities, 15 there are folks over at the sheriff's office that you work 16 with on some kind of regular basis? 17 MS. DINKLER: Objection to form. 18 A Over the years, I've encountered regular 19 detectives, and then of course they move on or retire or 20 whatever. 21 BY MR. DICELLO: 22 Q Who are those folks by name? 23 A One would be Mike Clymer was a long time 24 detective.</p>	<p>1 MS. DINKLER: Assumes facts not in evidence. 2 BY MR. DICELLO: 3 Q So independent of your review of the medical 4 records and of your documentation that you reviewed in 5 advance of today's deposition, do you have any independent 6 memory of Mr. Richardson's death or autopsy? 7 A No. 8 Q I saw one photograph of what appears to be a 9 doctor, it may not be a doctor, but somebody who was 10 rolling Mr. Richardson over on his back, and there was a 11 photograph taken of the back. And that individual was 12 African American. So I know it wasn't you. Who else was 13 present during the autopsy? 14 A Well, the person you're describing -- 15 Q Yeah, start there. 16 A Is Peter Lane. 17 Q And what is Mr. Lane's position? 18 A He's no longer with us. But at that time he 19 would have been a morgue technician. 20 Q Are you required to document who attends an 21 autopsy? 22 A Well, yes. Well, we do it by practice. We're 23 not required to. 24 Q Did a member from the Montgomery County</p>
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Page 66

Page 68

<p>1 Q Uh-huh. 2 A And I only know Hutch as Hutch. Hutchinson is 3 his last name. I do not know Hutch's first name. 4 Q Okay, Hutch. Anybody else? 5 A Just faces. I can't recall names. 6 Q Now, it's my understanding that the sheriff's 7 office can attend autopsies; correct? 8 A Oh, absolutely. 9 Q Is that something that a representative from 10 the family member of the decedent is ever offered, or no? 11 A What's your question? 12 Q It's my understanding that the coroner can 13 invite and permit members from the Montgomery County 14 Sheriff's Office to attend autopsies, and I think you told 15 me that's correct; yes? 16 A Yes. 17 Q Is the representative for the decedent ever 18 given that same opportunity, or no? 19 MS. DINKLER: Objection to form. 20 A You mean the attorney or -- 21 BY MR. DICELLO: 22 Q Sure. 23 A I've never encountered that scenario, so I 24 would not know if that would be permitted.</p>	<p>1 Sheriff's Office attend Mr. Richardson's autopsy? 2 A I do not recall. 3 Q I've looked at your documentation and I see 4 documentation where people are referenced, and it doesn't 5 include anyone from the Montgomery County Sheriff's 6 Office. 7 A That's right. 8 Q So we can assume that nobody from the 9 Montgomery County Sheriff's Office was there at the 10 autopsy; correct? 11 A Yes. 12 Q So I want to go about this, maybe, Doctor, it 13 would help me to kind of go through by habit and practice 14 how the -- what the protocol is for an in-custody death 15 like we have here, knowing that you don't have a specific 16 recollection, and then I've got documents and we can refer 17 to documents. But can you kind of walk me through what 18 the time line is by habit and practice, what happens when 19 somebody is ruled to be deceased at a jail and the coroner 20 needs to be contacted? Can you maybe walk me through the 21 steps of what happens? 22 A Okay. The first thing that would happen would 23 be the death would be reported to us, either by if the -- 24 if the inmate makes it to the hospital, that report might</p>
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Page 67

Page 69

<p>1 come from the hospital. If they're pronounced at the      2 jail, then it may come from an employee or a medic at the      3 scene. And that call would go to our coroner's      4 investigator. We have several. And so they would      5 document in a written report the details and answers to      6 their questions as best as possible to provide a basic      7 history of what kind of case we're dealing with.</p> <p>8     <b>Q Okay.</b></p> <p>9     A And then that information would generally be      10 presented to all the pathologists in a morning meeting.      11 And if it happens during the daytime, then it may be just      12 presented to the pathologist that's going to do the      13 autopsy.</p> <p>14     <b>Q How is a pathologist selected to do any given</b>      15 <b>autopsy?</b></p> <p>16     A There's really no -- We don't have a system for      17 assigning pathologists.</p> <p>18     <b>Q So when you said that you had done dozens of</b>      19 <b>jail deaths, were you referring to yourself specifically</b>      20 <b>or to the office generally?</b></p> <p>21     A Myself.</p> <p>22     <b>Q Is there any kind of one pathologist takes the</b>      23 <b>jail custody deaths over another, or are they pretty</b>      24 <b>evenly distributed?</b></p>	<p>1     <b>correct?</b></p> <p>2                 MS. DINKLER: Objection to form.</p> <p>3                 A From whatever sources are available. Are you      4 speaking of Mr. Richardson specifically?</p> <p>5     BY MR. DICELLO:</p> <p>6                 <b>Q Sure, if you want to use that as an example. I</b>      7 <b>think you said we talk with the officers to get as much</b>      8 <b>information as we can about the circumstances.</b></p> <p>9                 A Right.</p> <p>10                <b>Q So it sounds to me like you are talking to</b>      11 <b>people who are employed at the Montgomery County Jail to</b>      12 <b>gather the circumstances?</b></p> <p>13                MS. DINKLER: Objection to form.</p> <p>14                Go ahead.</p> <p>15                A The first person we talked to is actually a      16 Dayton fireman or paramedic.</p> <p>17     BY MR. DICELLO:</p> <p>18                <b>Q All right.</b></p> <p>19                A He's the one reporting the death. So I have no      20 idea if Paramedic McGinnis is employed in other ways. But      21 he has identified himself as a Dayton paramedic for Dayton      22 Fire.</p> <p>23                <b>Q And this is going to -- this information is</b>      24 <b>being gathered by an investigator?</b></p>
<p style="text-align: center;">Page 70</p>	<p style="text-align: center;">Page 72</p>

<p>1     A No, it's random.</p> <p>2     <b>Q Got it.</b></p> <p>3                 <b>So once you are as a pathologist assigned to a</b>      4 <b>jail custody death, what is the next step?</b></p> <p>5     A Well, keep in mind when you asked me about jail      6 deaths I wasn't referring just to custody restraint type      7 deaths. I hope we understand that.</p> <p>8     <b>Q Yeah. Thank you for the clarification.</b></p> <p>9     A So what's your question?</p> <p>10    <b>Q After someone like you or after you, one of the</b>      11 <b>pathologists is assigned to a jail death, what is the next</b>      12 <b>step for the coroner's office?</b></p> <p>13    A Well, we would -- every autopsy begins with the      14 history or the story, what do we know about the person and      15 circumstances as best as possible, as much detail as      16 possible prior to the autopsy. So we would gather that      17 through our coroner's investigator. If an officer attends      18 the autopsy, then we would continue to have that exchange      19 of information. Once we feel like we have all the      20 available information submitted to us that's currently      21 known about the case or currently available, then we would      22 actually proceed to the actual autopsy.</p> <p>23    <b>Q So up to this point in time, you're gathering</b>      24 <b>your information from the folks who work at the jail;</b></p>	<p>1     A Correct.</p> <p>2     <b>Q And this is -- The investigator in</b>      3 <b>Mr. Richardson's case was Mr. Jim Fannin?</b></p> <p>4     A That's correct.</p> <p>5     <b>Q Is Mr. Fannin a physician?</b></p> <p>6     A No. He's a former officer, police officer.</p> <p>7     <b>Q Former police officer?</b></p> <p>8     A That's right.</p> <p>9     <b>Q For what municipality?</b></p> <p>10    A Sheriff's department, Montgomery County.</p> <p>11    <b>Q So the coroner's office's lead investigator on</b>      12 <b>the Robert Richardson case is a former Montgomery County</b>      13 <b>Sheriff's Office employee; correct?</b></p> <p>14    A That's right.</p> <p>15    <b>Q And you're relying on Mr. Fannin gathering</b>      16 <b>sufficient information that you can then do your job;</b>      17 <b>correct?</b></p> <p>18    A In part, yes.</p> <p>19    <b>Q And Mr. Fannin, I understand, actually went to</b>      20 <b>the jail; correct?</b></p> <p>21    A He did.</p> <p>22    <b>Q Did you ever go to the jail?</b></p> <p>23    A Not in this case.</p> <p>24    <b>Q Did you then just observe photographs of what</b></p>
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<p>1     <b>Mr. Fannin saw at the jail?</b></p> <p>2     A   That's right.</p> <p>3     <b>Q   Did you interview any corrections officers?</b></p> <p>4     A   No.</p> <p>5     <b>Q   Did Mr. Fannin?</b></p> <p>6     A   He did speak to -- He talks about speaking to</p> <p>7     multiple correction officers at the scene. But I do not</p> <p>8     know if that is interviewing them or just, you know, just</p> <p>9     being hosted by them in the jail.</p> <p>10    <b>Q   Did you interview any of the eyewitness</b></p> <p>11    <b>d detainees who saw what happened to Mr. Richardson?</b></p> <p>12    A   No, I did not.</p> <p>13    <b>Q   Did Mr. Fannin interview any of those</b></p> <p>14    <b>d detainees?</b></p> <p>15    A   No.</p> <p>16    <b>Q   Did you contact any family members of</b></p> <p>17    <b>Mr. Richardson before starting your autopsy?</b></p> <p>18    A   No.</p> <p>19    <b>Q   Did Mr. Fannin contact any family members?</b></p> <p>20    A   Yes. He would have notified the decedent's</p> <p>21    grandparents of the death.</p> <p>22    <b>Q   Did he include any information that he obtained</b></p> <p>23    <b>from the grandparents?</b></p> <p>24    A   Not in his report, no.</p>	<p>1     A   Sure.</p> <p>2     <b>Q   And do you differentiate between positional</b></p> <p>3     <b>asphyxia and restraint asphyxia in an autopsy if you were</b></p> <p>4     <b>faced with a restraint asphyxia?</b></p> <p>5     MS. DINKLER: Objection to form.</p> <p>6     A   Well, some people seem to make a big difference</p> <p>7     between the two. I'm not sure I see their point about</p> <p>8     that.</p> <p>9     BY MR. DICELLO:</p> <p>10    <b>Q   Have you ever included the term "restraint</b></p> <p>11    <b>asphyxia" in an autopsy?</b></p> <p>12    A   No.</p> <p>13    <b>Q   Of the five to ten positional asphyxias that</b></p> <p>14    <b>you have included in your cause of death, have any of</b></p> <p>15    <b>those been as a result of restraint?</b></p> <p>16    A   By someone else, you mean?</p> <p>17    <b>Q   Yes.</b></p> <p>18    A   I don't think so, no.</p> <p>19    <b>Q   Do you consider yourself an expert in restraint</b></p> <p>20    <b>asphyxia?</b></p> <p>21    A   No. I have a working knowledge of it, but I'm</p> <p>22    not published or no one is knocking down my door asking to</p> <p>23    talk about it, no.</p> <p>24    <b>Q   Except me?</b></p>
Page 74	Page 75

<p>1 A Not to my knowledge, no.</p> <p>2 Q Nothing jumps out at you that says, hey, here's</p> <p>3 this form that isn't in there or anything like that?</p> <p>4 A No.</p> <p>5 Q We talked about the slides and the medical</p> <p>6 literature and the medical records. But in terms of the</p> <p>7 working file, is Exhibit 4 pretty complete?</p> <p>8 MS. DINKLER: Photographs, you talked about</p> <p>9 that.</p> <p>10 MR. DICELLO: They're in there.</p> <p>11 BY MR. DICELLO:</p> <p>12 Q Photographs are in there; right?</p> <p>13 A Yes.</p> <p>14 MS. DINKLER: Are all the photographs in there?</p> <p>15 THE WITNESS: I believe so.</p> <p>16 BY MR. DICELLO:</p> <p>17 Q So my question is, that's -- You know, I'm not</p> <p>18 going to hold you to it if we find another piece of paper</p> <p>19 later, Doctor. But based on your analysis of Exhibit 4</p> <p>20 right now, that is more or less the complete working file</p> <p>21 of the coroner's office for this case; is that true?</p> <p>22 A Yes. And in fact, there are other documents in</p> <p>23 here that I've never seen, like the DNA request for</p> <p>24 paternity, things like that.</p>	<p>1 certain risk factors associated with positional asphyxia</p> <p>2 that a coroner needs to consider when rendering a</p> <p>3 diagnosis; agreed?</p> <p>4 A Yes.</p> <p>5 Q Among the risk factors that make it more likely</p> <p>6 that someone will die from positional asphyxia include the</p> <p>7 following: Obesity is a risk factor for positional</p> <p>8 asphyxia; true?</p> <p>9 A Yes.</p> <p>10 Q And within the context of obesity, an obese</p> <p>11 person that has a protuberant, if I'm saying that</p> <p>12 correctly, or big belly is at an even higher risk of</p> <p>13 positional asphyxia when placed prone; correct?</p> <p>14 A It can be, yes.</p> <p>15 Q And the reason for that is because a bigger</p> <p>16 belly, when there's weight applied to the abdomen, either</p> <p>17 by weight of the body from laying on top of it or</p> <p>18 pressure, external pressure on a patient's back, can force</p> <p>19 the contents of the belly up under the rib cage; correct?</p> <p>20 A Against the diaphragm.</p> <p>21 Q Correct?</p> <p>22 A In certain individuals, that's right.</p> <p>23 Q And that can restrict breathing; correct?</p> <p>24 A It can.</p>
<p style="text-align: center;">Page 78</p>	<p style="text-align: center;">Page 80</p>

<p>1 A And so in the setting of restraint asphyxia,      2 that is referring to -- that impairment is due to being      3 restrained, physically restrained, either by shackles,      4 handcuffs, individuals, all three, okay?</p> <p>5 Q <b>(Nods head.)</b></p> <p>6 A And I actually prefer that term over positional      7 asphyxia, because, to me, positional asphyxia is used in      8 lots of other settings; drunk upside down between the bed      9 and the wall, someone in a car that's on its top.</p> <p>10 Q <b>Going up the chimney, that kind of stuff?</b></p> <p>11 A I'm sorry?</p> <p>12 Q <b>I said going up the chimney; right?</b></p> <p>13 A I'm not sure what you're referring to.</p> <p>14 Q <b>You haven't heard of one of those yet? Go ahead.</b></p> <p>15 A Yeah, I do know what you're talking about.</p> <p>16 Q <b>All right.</b></p> <p>17 A So if we're talking about restraint asphyxia,      18 it's this idea that you can place someone in a position of      19 restraint that is dangerous in their ability to breathe.</p> <p>20 Q <b>So restraint asphyxia is a legitimate medical condition that occurs; true?</b></p> <p>21 A Sure.</p> <p>22 Q <b>And are you aware of people dying from</b></p>	<p>1 Q <b>And to exclude the surrounding facts and circumstances of an in-custody death where somebody dies with their hands cuffed behind their back while they're on the ground would violate the rules that apply to a forensic pathologist; correct?</b></p> <p>6 A Okay. So what's your question?</p> <p>7 Q <b>Yeah, that was a long-worded question. Thank you for following up.</b></p> <p>9 I think you said one of the rules that applies to coroners is they have to consider all the facts and circumstances surrounding the time and place of death; correct?</p> <p>13 A As best they can, that's right.</p> <p>14 Q <b>Right. And if a coroner were to come to a diagnosis and exclude that information, that would be inappropriate; right?</b></p> <p>17 A Yes.</p> <p>18 Q <b>All right. So with respect to restraint --</b></p> <p>19 A And by "exclude," you mean not consider it?</p> <p>20 Q <b>Correct.</b></p> <p>21 A Okay. Right. Yes, I agree with that.</p> <p>22 Q <b>The surrounding circumstances of a death cannot be ignored; true?</b></p> <p>24 A Correct.</p>
Page 82	Page 84

<p>1 A Sure.</p> <p>2 Q And sometimes when we say "respiratory muscle 3 fatigue," a layman's way of putting that is physical 4 exhaustion as a result of exertion; true?</p> <p>5 A That's right.</p> <p>6 Q So in other words, somebody who has been 7 struggling with another person is at a higher risk of 8 dying from positional asphyxia; true?</p> <p>9 A I would say can be. It depends on the 10 individual's condition.</p> <p>11 Q But when someone is struggling, their muscles 12 require more oxygen; true?</p> <p>13 A That's right.</p> <p>14 Q And if someone's breathing is inhibited, then 15 the tissues, the muscles don't get the oxygen, and that 16 can lead to death; correct?</p> <p>17 A That's right.</p> <p>18 Q That's what positional asphyxiation is; true?</p> <p>19 Part of it? Part of positional asphyxiation is after a 20 struggle the tissues and the muscle tissues in the body 21 need more oxygen and they can't get it and that condition 22 contributes to the death; correct?</p> <p>23 A It can, yes.</p> <p>24 Q Cardiomegaly makes someone more susceptible or</p>	<p>1 mouth, while not exclusively consistent with positional 2 asphyxia death, is a sign that is consistent with a 3 positional asphyxiation death; true?</p> <p>4 A Can be, yes.</p> <p>5 Q Signs that someone during the struggle in the 6 prone restraint is having trouble breathing is a sign that 7 is consistent with positional asphyxiation; correct?</p> <p>8 A What kind of signs as far as trouble breathing?</p> <p>9 Q Someone who is evaluated to be in need of 10 supplemental oxygen.</p> <p>11 A Okay. So what's your question?</p> <p>12 Q That's another sign. So when we're talking 13 about risk factors and we're putting all this information 14 together to create a constellation of signs and symptoms 15 that are consistent with or might militate in favor of 16 positional asphyxiation, one thing the coroner should 17 consider is was this person demonstrating the need for 18 air; true?</p> <p>19 A For supplemental oxygen?</p> <p>20 Q Yes.</p> <p>21 A Sure, absolutely.</p> <p>22 Q And so someone who is showing signs that 23 they're having trouble breathing while restrained is a 24 sign consistent with positional asphyxiation; true?</p>
Page 86	Page 88

1 at higher risk for positional and restraint asphyxiation  
2 death; correct?

3 A That's one kind of death that cardiomegaly is a  
4 negative to have, that's right.

5 Q Gasping sounds or gurgling during the restraint  
6 is a sign or symptom that is consistent with someone dying  
7 from positional asphyxiation; true?

8 A It can go with that, yes.

9 Q Foam or mucus coming from the nose or mouth is  
10 a sign that is consistent with someone dying from  
11 positional asphyxiation; true?

12 A Well, you keep saying "consistent with" and  
13 naming these things that are not really specific. And so  
14 that's why I keep saying "it can be."

15 Q Sure.

16 A Yes, it can be. It's not unique to restraint  
17 asphyxia or positional asphyxia.

18 Q I think what you told us is nothing is unique  
19 to restraint or positional asphyxia; correct?

20 MS. DINKLER: Objection to form.

21 Go ahead.

22 A Except for ten guys on your back.

23 BY MR. DICELLO:

24 Q Sure. So foam or mucus coming from the nose or

1 MS. DINKLER: Asked and answered.

2 A It can be.

3 BY MR. DICELLO:

4 Q And someone who is trying to gasp for air  
5 during a struggle while they're in a prone position is  
6 consistent with positional asphyxiation; true?

7 A Also can be, yes.

8 Q Someone who verbalizes, "I can't breathe, get  
9 off of me," is another sign that is consistent with a  
10 positional asphyxiation death; correct?

11 A Sure.

12 Q All of the signs and symptoms that I just went  
13 through were present with Mr. Richardson; true?

14 A I don't recall whether he made statements about  
15 "I can't breathe, get off of me."

16 Q Did you review the -- Are you familiar with  
17 NaphCare?

18 A I just know the jail has a contract with  
19 someone to provide medical services.

20 Q Okay.

21 A That's what I know.

22 Q My understanding is that the folks that are  
23 providing the medical care over at the Montgomery County  
24 Jail are employed by a company called NaphCare.

<p>1 A Okay.</p> <p>2 Q Did you review at any time, now let's focus on</p> <p>3 prior to you creating your autopsy, did you review any</p> <p>4 documentation created by the people responsible for</p> <p>5 providing medical care at the jail?</p> <p>6 MS. DINKLER: Asked and answered.</p> <p>7 Go ahead.</p> <p>8 A That would be my usual practice, but I do not</p> <p>9 recall.</p> <p>10 BY MR. DICELLO:</p> <p>11 Q Do you recall reviewing any death summaries</p> <p>12 issued by NaphCare? I'm showing you what's been marked as</p> <p>13 NaphCare 143, 144, 146. Did you review any of these</p> <p>14 documents?</p> <p>15 A Prior to signing my report, is that what you</p> <p>16 mean?</p> <p>17 Q Yeah.</p> <p>18 A I do not recall.</p> <p>19 Q Did you review the incident report authored by</p> <p>20 NaphCare at any time prior to issuing your autopsy? And</p> <p>21 it looks something like this. I'm showing you what's been</p> <p>22 marked as NaphCare 9 to NaphCare 10. Do you remember</p> <p>23 reviewing this?</p> <p>24 A Again, incident reports would, again, be part</p>	<p>1 A No.</p> <p>2 BY MR. DICELLO:</p> <p>3 Q Because that's what happened; correct?</p> <p>4 MS. DINKLER: Objection to form.</p> <p>5 A That's correct.</p> <p>6 BY MR. DICELLO:</p> <p>7 Q There's documentation in here, Doctor, that</p> <p>8 says that when you reviewed the video, okay? Did you --</p> <p>9 Let me ask you some questions about the video.</p> <p>10 A Okay.</p> <p>11 Q When were you first given a copy of the video?</p> <p>12 I think it was June 21st, 2012; is that right?</p> <p>13 A June 20th, 2012.</p> <p>14 Q June 20th, thank you. So that was over a month</p> <p>15 after Mr. Richardson died?</p> <p>16 A That's right.</p> <p>17 Q And it was about a month after you performed</p> <p>18 your autopsy?</p> <p>19 A Correct.</p> <p>20 Q Did you request video evidence of this man's</p> <p>21 death?</p> <p>22 A Yes.</p> <p>23 Q And it took the jail about a month to get it to</p> <p>24 you?</p>
<p style="text-align: center;">Page 90</p>	<p style="text-align: center;">Page 92</p>

<p>1 of the thing that I would be interested in in coming to my</p> <p>2 conclusions. But I do not recall that specific document.</p> <p>3 Q The health services administrator for NaphCare</p> <p>4 documented in the incident report on May 21st, 2012 at</p> <p>5 nine a.m., so two days after Mr. Richardson died, she</p> <p>6 documented "prior to injection" -- is it your</p> <p>7 understanding that an Ativan injection was administered?</p> <p>8 A That's right.</p> <p>9 Q "Prior to injection, patient was being held</p> <p>10 down in a prone position by several correctional</p> <p>11 officers." Did you know that that was the HSA's</p> <p>12 documentation of what happened?</p> <p>13 MS. DINKLER: Objection to form.</p> <p>14 Go ahead.</p> <p>15 A HSA?</p> <p>16 BY MR. DICELLO:</p> <p>17 Q Health services administrator. Sorry.</p> <p>18 A Okay. Again, I likely reviewed that, but I do</p> <p>19 not remember that.</p> <p>20 Q Do you have any reason to challenge the</p> <p>21 incident report by NaphCare that prior to receiving the</p> <p>22 Ativan injection that Mr. Richardson was being held down</p> <p>23 in a prone position by several corrections officers?</p> <p>24 MS. DINKLER: Objection to form.</p>	<p>1 A I don't know when I requested it, so I don't</p> <p>2 know how long it took them to, you know, to supply that.</p> <p>3 Q You issued a death certificate, did you not,</p> <p>4 Doctor, identifying the cause of death for Mr. Richardson</p> <p>5 before watching that video; true?</p> <p>6 A Yes, a -- the first death certificate on May</p> <p>7 25th.</p> <p>8 Q So at the time you issued your first death</p> <p>9 certificate on May 25th, which finds that Mr. Richardson</p> <p>10 died from hypertensive and arteriosclerotic cardiovascular</p> <p>11 disease, at the time you issued that cause of death, you</p> <p>12 had not had the benefit of watching the incident of</p> <p>13 Mr. Richardson's demise; true?</p> <p>14 A That's right.</p> <p>15 Q And it was a detective from the sheriff's</p> <p>16 office who brought you the video to watch; correct?</p> <p>17 A I don't know if he's a detective, but Mike</p> <p>18 Sollenberger.</p> <p>19 Q And did Detective Sollenberger give you a copy</p> <p>20 of the video or did he show it to you?</p> <p>21 A No, he showed it to me.</p> <p>22 Q Did he leave you with a copy of the video so</p> <p>23 you could watch it a second time?</p> <p>24 A Not to my knowledge.</p>
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<p>1       Q   How long was the video that you watched?</p> <p>2       A   I think it's 20 some minutes.</p> <p>3       Q   Did you sit there and watch the entire video?</p> <p>4       A   Yeah.</p> <p>5       Q   And Detective Sollenberger was with you while</p> <p>6       you watched it?</p> <p>7       A   That's right.</p> <p>8       Q   Did Detective Sollenberger provide you any</p> <p>9       commentary while the two of were you watching the video?</p> <p>10      A   I'm sure he did.</p> <p>11      Q   And did he tell you what was happening as you</p> <p>12      were watching it?</p> <p>13      A   Yeah. In some ways, yeah.</p> <p>14      Q   How many times before issuing your autopsy</p> <p>15      report did you watch the video, Doctor?</p> <p>16      A   Probably just that one day. I don't know how</p> <p>17      many times we went through it. I don't recall that. But</p> <p>18      --</p> <p>19      Q   Did you show that video to any of your other</p> <p>20      forensic pathologists at the coroner's office?</p> <p>21      A   I don't know who all was present at this</p> <p>22      viewing that Detective Sollenberger brought over.</p> <p>23      Q   Do you remember other people being present?</p> <p>24      A   I just do not remember.</p>	<p>1       correct?</p> <p>2            MS. DINKLER: Objection to form.</p> <p>3       A   I would not say that.</p> <p>4       BY MR. DICELLO:</p> <p>5       Q   So you're telling me he might have said, Hey,</p> <p>6       Dr. Casto, here's a copy of the video of this man dying</p> <p>7       and you said, no, I don't need it, take it out of here?</p> <p>8            MS. DINKLER: Objection to form.</p> <p>9       A   I would accept it if it's offered. Would I be</p> <p>10      able to find it three years later? I have no idea.</p> <p>11      BY MR. DICELLO:</p> <p>12      Q   Oh, okay. So if he was providing -- if</p> <p>13      Detective Sollenberger came by and gave you your copy, why</p> <p>14      did -- what is your understanding of why Detective</p> <p>15      Sollenberger stayed there and viewed it with you?</p> <p>16           MS. DINKLER: Objection to form.</p> <p>17       A   Well, there's certain things about the video</p> <p>18      that, if not given some commentary about, you would not</p> <p>19      know what is happening. Like for example, the injection.</p> <p>20      You know, the video is of fairly good quality, but you</p> <p>21      cannot see a syringe, do you know what I'm saying?</p> <p>22      BY MR. DICELLO:</p> <p>23      Q   Yeah.</p> <p>24      A   So he was there to basically tell me this is</p>
Page 94	Page 95

<p>1 MS. DINKLER: Objection to form.</p> <p>2 A I do regularly see people who are dead from</p> <p>3 other reasons who do have a thickened left ventricle, and</p> <p>4 an enlarged heart and coronary artery disease.</p> <p>5 BY MR. DICELO:</p> <p>6 Q Right. I'm going to get to those.</p> <p>7 A I figured you were.</p> <p>8 Q Would you agree with me that a lot of people in</p> <p>9 this country died with a diagnosis of left ventricular</p> <p>10 hypertrophy but they don't die from left ventricular</p> <p>11 hypertrophy based on your experience?</p> <p>12 MS. DINKLER: Asked and answered.</p> <p>13 A That's true.</p> <p>14 BY MR. DICELO:</p> <p>15 Q And so most people with LVH in your experience</p> <p>16 don't die from it; true?</p> <p>17 MS. DINKLER: Asked and answered for a third</p> <p>18 time.</p> <p>19 MR. DICELO: No, this is a different question.</p> <p>20 BY MR. DICELO:</p> <p>21 Q Go ahead.</p> <p>22 A Again, I would not know the percentage of</p> <p>23 people dying from left ventricular hypertrophy.</p> <p>24 Q How many times have you found someone dying</p>	<p>1 cardiovascular disease as the cause of death in somebody</p> <p>2 who is in the age range of 28 years old?</p> <p>3 MS. DINKLER: Of 20 what?</p> <p>4 MR. DICELO: 28.</p> <p>5 A Actually, it is increasingly common. So yes,</p> <p>6 I've seen fatal heart disease in 19-year-olds of this</p> <p>7 type. So yes, it does happen.</p> <p>8 BY MR. DICELO:</p> <p>9 Q Recognizing that it does happen, would you</p> <p>10 agree that it is exceedingly rare in that age category?</p> <p>11 MS. DINKLER: Objection to form.</p> <p>12 A It is rare, sure.</p> <p>13 BY MR. DICELO:</p> <p>14 Q I'm going to jump around a little bit, Doctor.</p> <p>15 I'm trying to do this as efficiently as I can. Bear with</p> <p>16 me.</p> <p>17 Robert Richardson had atherosclerotic heart</p> <p>18 disease only of the left anterior descending artery;</p> <p>19 correct?</p> <p>20 A That's correct.</p> <p>21 Q He was right coronary artery dominant; true?</p> <p>22 A Correct.</p> <p>23 Q Meaning the majority of the circulation to his</p> <p>24 heart was through the right coronary artery distribution;</p>
<p style="text-align: center;">Page 98</p> <p>1 from LVH?</p> <p>2 A Well, I don't say someone died from left</p> <p>3 ventricular hypertrophy. That's not the manner I would</p> <p>4 say that. I would call it hypertensive cardiovascular</p> <p>5 disease or cardiomegaly of undetermined etiology or</p> <p>6 something like that. I would not say left ventricular</p> <p>7 hypertrophy. That's a feature of a thick and enlarged</p> <p>8 heart.</p> <p>9 Q So let me use the medical term "hypertensive</p> <p>10 cardiovascular disease," okay?</p> <p>11 A Okay.</p> <p>12 Q So do you agree that a lot of people die with</p> <p>13 hypertensive cardiovascular disease, but not from</p> <p>14 hypertensive cardiovascular disease?</p> <p>15 MS. DINKLER: Objection to form, specifically a</p> <p>16 lot of people. It's vague.</p> <p>17 A I commonly see hypertensive cardiovascular</p> <p>18 disease as the cause of death and not the cause of death.</p> <p>19 BY MR. DICELO:</p> <p>20 Q Is there any percentage?</p> <p>21 A No.</p> <p>22 Q More often than not?</p> <p>23 A No, I can't give you that.</p> <p>24 Q How many times have you included hypertensive</p>	<p style="text-align: center;">Page 100</p> <p>1 correct?</p> <p>2 A No.</p> <p>3 Q So tell me why you describe him as right</p> <p>4 coronary artery dominant and what I got wrong with my last</p> <p>5 question.</p> <p>6 A Right dominant or left dominant circulation of</p> <p>7 the coronary artery is only referring to what side of the</p> <p>8 coronary vasculature does the posterior descending</p> <p>9 coronary artery come from. So the artery that runs down</p> <p>10 the back of the heart, if it comes off of the right main</p> <p>11 coronary, it's right dominant. If it comes off the</p> <p>12 circumflex, it's left dominant. Some people are</p> <p>13 co-dominant.</p> <p>14 Q And that posterior artery that runs down the</p> <p>15 back, does that supply the heart muscle?</p> <p>16 A Sure. They all do.</p> <p>17 Q You found no thrombus on autopsy; true?</p> <p>18 A That's right.</p> <p>19 Q So there was no total occlusion of</p> <p>20 Mr. Richardson's artery; correct?</p> <p>21 A That's right.</p> <p>22 Q So in terms of an occluded left anterior</p> <p>23 descending artery, totally occluded, what some people</p> <p>24 refer to as the widowmaker, that's not what Mr. Richardson</p>

<p>1      <b>suffered, is it?</b></p> <p>2      A    He does not have that. He has a 75 percent</p> <p>3      stenosis of his left anterior descending coronary artery.</p> <p>4      Q    <b>You did not document whether or not that lesion</b></p> <p>5      <b>was proximal or distal in the left anterior descending,</b></p> <p>6      <b>did you?</b></p> <p>7      A    I did not.</p> <p>8      Q    <b>Was it distal?</b></p> <p>9      A    I would not remember at this point.</p> <p>10     Q    <b>That makes a big difference, doesn't it,</b></p> <p>11     <b>Doctor?</b></p> <p>12     MS. DINKLER: Objection to form.</p> <p>13     A    I would not agree with that.</p> <p>14     BY MR. DICELLO:</p> <p>15     Q    <b>Well, if the lesion that is 75 percent stenosed</b></p> <p>16     <b>is at the proximal portion of the left anterior</b></p> <p>17     <b>descending, then you would agree that the blood flow to</b></p> <p>18     <b>the remaining portion of the artery is compromised; true?</b></p> <p>19     A    It can be, sure.</p> <p>20     Q    <b>And if that lesion is at the distal end of the</b></p> <p>21     <b>left anterior descending artery, then all the component of</b></p> <p>22     <b>the left anterior descending artery that is proximal to</b></p> <p>23     <b>the distal portion where the lesion is not compromised;</b></p> <p>24     <b>true?</b></p>	<p>1      <b>at this point?</b></p> <p>2      A    No.</p> <p>3      Q    <b>How did you go about evaluating it was 75</b></p> <p>4      <b>percent?</b></p> <p>5      A    I would make serial cross sections of the</p> <p>6      coronary vasculature at close intervals, and then estimate</p> <p>7      the remaining lumen from that occluded plaque.</p> <p>8      Q    <b>Did you maintain those serial sections so that</b></p> <p>9      <b>we could evaluate the extent of stenosis?</b></p> <p>10     MS. DINKLER: Objection; form.</p> <p>11     A    There would be a microscopic section submitted</p> <p>12     of the coronary atherosclerosis. Estimating coronary</p> <p>13     stenosis at autopsy is actually better done in the gross</p> <p>14     rather than microscopic.</p> <p>15     Q    <b>Right. Did you --</b></p> <p>16     A    And --</p> <p>17     Q    <b>I'm sorry.</b></p> <p>18     A    And I would have retained sections of the</p> <p>19     coronary to make sure all the organs, including the</p> <p>20     coronary atherosclerosis, that wasn't submitted for</p> <p>21     microscopic examination. But again, that would not be</p> <p>22     retained forever.</p> <p>23     Q    <b>Are you telling me that the section of the left</b></p> <p>24     <b>anterior descending artery that you believe had this 75</b></p>
<p style="text-align: center;">Page 102</p>	<p style="text-align: center;">Page 104</p>

<p>1   <b>normal range to be for his heart?</b></p> <p>2   A Well, the literature is full of normal heart</p> <p>3   ranges that are all over the place. And some of them are</p> <p>4   probably reasonable, some of them are not reasonable.</p> <p>5   <b>Q What do you consider reasonable for a six foot</b></p> <p>6   <b>280 pound 28-year-old man?</b></p> <p>7   A I think the mean that you would expect in this</p> <p>8   kind of individual would be like in the mid 400s as an</p> <p>9   upper limit. Just because you're heavier doesn't mean you</p> <p>10   get to have a larger than normal heart.</p> <p>11   <b>Q So we've talked about the 75 percent lesion.</b></p> <p>12   <b>But the remaining vasculature to the heart, the arteries</b></p> <p>13   <b>at least, were widely patent; correct?</b></p> <p>14   A That's right.</p> <p>15   <b>Q So there was no arteriosclerotic heart disease</b></p> <p>16   <b>other than this one lesion found in the LAD; correct?</b></p> <p>17   A That's right.</p> <p>18   <b>Q And let's focus on just the condition, the</b></p> <p>19   <b>anatomical condition of Mr. Richardson's heart. Would you</b></p> <p>20   <b>agree that that condition of his heart is not incompatible</b></p> <p>21   <b>with life?</b></p> <p>22   A Oh, sure. People can walk around with worse</p> <p>23   heart disease than he has.</p> <p>24   <b>Q Right. And Mr. Richardson's condition of his</b></p>	<p>1   MS. DINKLER: Objection to form.</p> <p>2   BY MR. DICELLO:</p> <p>3   <b>Q I mean all --</b></p> <p>4   A That's my opinion. But I don't know what the</p> <p>5   "all" is.</p> <p>6   <b>Q Ultimately the terminal event for most</b></p> <p>7   <b>everybody is your heart stops beating; true?</b></p> <p>8   MS. DINKLER: Objection.</p> <p>9   A That is an overgeneralization I wouldn't agree</p> <p>10   with.</p> <p>11   BY MR. DICELLO:</p> <p>12   <b>Q So but what you're telling us today is the</b></p> <p>13   <b>conduct of the officers in connection with their</b></p> <p>14   <b>interaction with Mr. Richardson, that struggle, that</b></p> <p>15   <b>restraint, whatever the jury decides it is, contributed to</b></p> <p>16   <b>causing Mr. Richardson's fatal arrhythmia; true?</b></p> <p>17   A I would not say that.</p> <p>18   MS. DINKLER: Objection; form.</p> <p>19   A I would not say that.</p> <p>20   MS. DINKLER: Go ahead.</p> <p>21   BY MR. DICELLO:</p> <p>22   <b>Q I thought you just did?</b></p> <p>23   A I don't believe so.</p> <p>24   <b>Q I thought you said, well, the exercise involved</b></p>
<p style="text-align: center;">Page 106</p> <p>1   <b>heart as you observed it on autopsy, that was the</b></p> <p>2   <b>condition of his heart for at least weeks and months</b></p> <p>3   <b>leading up to his death; true?</b></p> <p>4   A Well, I wouldn't age his atherosclerotic</p> <p>5   plaques. But yeah, it's --</p> <p>6   <b>Q It's chronic?</b></p> <p>7   A Preexisting disease, yes. It was there --</p> <p>8   <b>Q It's a chronic condition?</b></p> <p>9   A That's right.</p> <p>10   <b>Q Doctor, the interaction with the officers, the</b></p> <p>11   <b>jury can decide what it was and what it wasn't. I'm</b></p> <p>12   <b>asking you: That interaction with the corrections</b></p> <p>13   <b>officers on May 19th, 2012 contributed to causing</b></p> <p>14   <b>Mr. Richardson's death; true?</b></p> <p>15   MS. DINKLER: Objection to form.</p> <p>16   A Well, I think I need a little bit more specific</p> <p>17   question. You mean the exercise of being restrained?</p> <p>18   BY MR. DICELLO:</p> <p>19   <b>Q Yeah.</b></p> <p>20   A Oh, sure. I mean, exercise is a cardiac</p> <p>21   stressor, no doubt about it.</p> <p>22   <b>Q So we all agree he died of a fatal arrhythmia,</b></p> <p>23   <b>don't we all?</b></p> <p>24   A Well, I don't know who "all" is.</p>	<p style="text-align: center;">Page 108</p> <p>1   <b>with the restraint, you said, sure, that contributed to</b></p> <p>2   <b>causing his death; right?</b></p> <p>3   A That's true.</p> <p>4   <b>Q So the process of struggling while being</b></p> <p>5   <b>restrained is what put stress on the heart; true?</b></p> <p>6   MS. DINKLER: Objection to form.</p> <p>7   Go ahead.</p> <p>8   A In this case, that's one stressor.</p> <p>9   BY MR. DICELLO:</p> <p>10   <b>Q Okay.</b></p> <p>11   A One.</p> <p>12   <b>Q So that is one stressor that, to a reasonable</b></p> <p>13   <b>degree of medical certainty, contributed to causing a</b></p> <p>14   <b>fatal arrhythmia; correct?</b></p> <p>15   A I don't have any trouble with that, sure.</p> <p>16   <b>Q Some of the autopsy findings I want to get</b></p> <p>17   <b>into, and please refer to the autopsy, Doctor.</b></p> <p>18   A Okay.</p> <p>19   <b>Q You recognized pulmonary edema in this man?</b></p> <p>20   A No.</p> <p>21   <b>Q I'm probably using "pulmonary edema" in the</b></p> <p>22   <b>wrong way. But you found abundant congestive blood in the</b></p> <p>23   <b>lungs?</b></p> <p>24   A That's right.</p>

<p>1       <b>Q</b> And the lungs were outside the range of normal    2       <b>weight; correct?</b>    3       A Slightly, yes.    4       <b>Q</b> Well, what would you consider the normal lung    5       weight -- right and left, because I know they weigh    6       different. What would you consider the average lung    7       weight of the right lung of a man, a 28-year-old man?    8       A Well --    9       <b>Q</b> It's in the 400s, isn't it?    10      A It's probably in the range of 350 to 500 for    11      the average lung weight.    12      <b>Q</b> Okay, for the right lung? And then how about    13      the left?    14      A The left is going to be less.    15      <b>Q</b> Less. So Mr. Richardson's lungs were 695 grams    16      on the right and 605 grams on the left; correct?    17      A That's right.    18      <b>Q</b> That's because they were heavy because they    19      were retaining fluid; correct?    20      A Well, they were congested. Congestion and    21      pulmonary edema are not the same thing.    22      <b>Q</b> But they were congested with -- as a result of    23      edema; correct?    24      A No.</p>	<p>1       a respiratory death.    2       <b>Q</b> Okay.    3       A You expect pulmonary edema in respiratory    4       depression. He does not have pulmonary edema. It is not    5       the same as congestion.    6       <b>Q</b> So I think you told me that positional asphyxia    7       is a cardiac death; correct?    8       A Okay. But just a minute ago, you're asking me    9       whether the lung findings are due to a respiratory death.    10      <b>Q</b> Okay.    11      A If I understood you.    12      <b>Q</b> You're exactly right.    13      A If I'm misunderstanding, tell me.    14      <b>Q</b> No, no, you're exactly right. So let me --    15      MS. DINKLER: Remember, it's your job to tell    16      him if you don't understand something. Don't assume    17      anything.    18      BY MR. DICELLO:    19      <b>Q</b> I'm with you. I think I understand your    20      answer.    21      So let me say it this way: Mr. Richardson's    22      findings on autopsy with respect to his lungs, the    23      pulmonary parenchyma, is persistent by a death by    24      positional or restraint asphyxiation; true?</p>
<p style="text-align: center;">Page 110</p>	<p style="text-align: center;">Page 112</p>

<p>1 have died that day with or without restraint.</p> <p>2 BY MR. DICELLO:</p> <p>3     <b>Q Can you say without restraint, more likely than</b></p> <p>4     <b>not, to a reasonable degree of medical certainty, that</b></p> <p>5     <b>Mr. Richardson would have died on May 19th, 2012?</b></p> <p>6     A I have no way of knowing whether he would have</p> <p>7     died that day.</p> <p>8     <b>Q I appreciate that. I'm not trying to sound</b></p> <p>9     <b>glib, and I apologize if I am. But the lawyers live in</b></p> <p>10     <b>the world of, as you know, reasonable degree of medical</b></p> <p>11     <b>certainty. So let me just state the question and get the</b></p> <p>12     <b>answer for the record.</b></p> <p>13     <b>Can you say to a reasonable degree of medical</b></p> <p>14     <b>certainty that had Mr. Richardson not had this encounter</b></p> <p>15     <b>with corrections officers that he would have died on May</b></p> <p>16     <b>19th, 2012 none the less?</b></p> <p>17     MS. DINKLER: Asked and answered.</p> <p>18     Go ahead.</p> <p>19     A I do not know whether he would have died. He</p> <p>20     was having a medical event of some type before the</p> <p>21     restraint began. That is very important to me. So could</p> <p>22     he -- Would I be surprised if he passed away in his cell</p> <p>23     without restraint after the reported, you know, passing</p> <p>24     out or seizure activity or whatever he was having? I</p>	<p>1     MS. DINKLER: You can tell him for a fourth</p> <p>2     time.</p> <p>3     BY MR. DICELLO:</p> <p>4     <b>Q Go ahead.</b></p> <p>5     MS. DINKLER: Or you can just have the question</p> <p>6     and your answer read back.</p> <p>7     A You're asking do I know?</p> <p>8     BY MR. DICELLO:</p> <p>9     <b>Q No, I'm not.</b></p> <p>10     A Okay.</p> <p>11     <b>Q Okay? That's why I want you to listen.</b></p> <p>12     A I know. I'm trying.</p> <p>13     MS. DINKLER: Do I know and can you state are</p> <p>14     the same thing.</p> <p>15     BY MR. DICELLO:</p> <p>16     <b>Q Doctor, we have to fit these into a certain</b></p> <p>17     <b>language.</b></p> <p>18     A Well, you have to. I don't.</p> <p>19     <b>Q I know. That's why it's kind of odd. But I'm</b></p> <p>20     <b>saying you can't state to a reasonable degree of medical</b></p> <p>21     <b>certainty that but for Mr. Richardson's interaction with</b></p> <p>22     <b>the corrections officers that he would have died on May</b></p> <p>23     <b>19th, 2012; correct?</b></p> <p>24     MS. DINKLER: Asked and answered for a fifth</p>
Page 114	Page 116
<p>1 would not be surprised by that.</p> <p>2 BY MR. DICELLO:</p> <p>3     <b>Q I appreciate that. I know we're not talking</b></p> <p>4     <b>past each other. But I need an answer. You can't say to</b></p> <p>5     <b>a reasonable degree of medical certainty that</b></p> <p>6     <b>Mr. Richardson would have died on May 19th, 2012 even</b></p> <p>7     <b>without encountering the restraint and struggle he had</b></p> <p>8     <b>with the corrections officers; true?</b></p> <p>9     MS. DINKLER: Asked and answered.</p> <p>10     A I cannot --</p> <p>11     MS. DINKLER: Tell him a third time.</p> <p>12     A -- answer that question.</p> <p>13     BY MR. DICELLO:</p> <p>14     <b>Q You can't --</b></p> <p>15     A That's a crystal ball type question. I can't</p> <p>16     answer that.</p> <p>17     <b>Q I understand that. You can't state that to a</b></p> <p>18     <b>reasonable degree of medical certainty; true?</b></p> <p>19     MS. DINKLER: Asked and answered. He's</p> <p>20     answered it. You've asked him the same question now four</p> <p>21     times. He's given you an explanation as to why he can't</p> <p>22     answer it.</p> <p>23     BY MR. DICELLO:</p> <p>24     <b>Q Go ahead, Doctor.</b></p>	<p>1 time. You can give him your same answer again.</p> <p>2 A My answer is I do not know.</p> <p>3 BY MR. DICELLO:</p> <p>4     <b>Q What is acute marijuana intoxication?</b></p> <p>5     A Well, marijuana intoxication, acute, is</p> <p>6     indicating that the decedent was under the influence of</p> <p>7     marijuana at time of his death.</p> <p>8     <b>Q Okay.</b></p> <p>9     A And generally, I would not use that term unless</p> <p>10     there is more than just marijuana metabolite in the</p> <p>11     decedent's blood. So in other words, we like to see THC</p> <p>12     to say that this person is acutely under the influence of</p> <p>13     it.</p> <p>14     <b>Q Do you know, can you say to a reasonable degree</b></p> <p>15     <b>of medical certainty that Mr. Richardson was intoxicated?</b></p> <p>16     A Well, many people confuse the term</p> <p>17     "intoxication" with someone stumbling drunk alongside the</p> <p>18     road. When we say "intoxication," we just mean they're</p> <p>19     under the influence. I have no ability to know his level</p> <p>20     of impairment.</p> <p>21     <b>Q Okay.</b></p> <p>22     A In other words, don't confuse intoxication with</p> <p>23     impairment. It just means he's under the influence of the</p> <p>24     drug.</p>
Page 115	Page 117

<p>1       Q   Okay.</p> <p>2       A   Okay?</p> <p>3       <b>Q   Can you state to a reasonable degree of medical</b></p> <p>4       <b>certainty how much marijuana he consumed?</b></p> <p>5       A   No.</p> <p>6       <b>Q   Can you state to a reasonable degree of medical</b></p> <p>7       <b>certainty when he last consumed marijuana?</b></p> <p>8       A   No.</p> <p>9       <b>Q   One of the analytes that was found is not</b></p> <p>10      <b>psychoactive; correct?</b></p> <p>11      A   Are you talking about</p> <p>12      11-carboxy-Tetrahydrocannabinol?</p> <p>13      <b>Q   Correct. If you know.</b></p> <p>14      A   I do not know.</p> <p>15      <b>Q   I want you to assume that that is not a</b></p> <p>16      <b>psychoactive metabolite. If I'm correct, would you agree</b></p> <p>17      <b>that the presence of that would not contribute to any</b></p> <p>18      <b>intoxication?</b></p> <p>19      A   Right. THC, the parent -- the primary</p> <p>20      psychoactive component of marijuana is really what we're</p> <p>21      interested in --</p> <p>22      <b>Q   Okay.</b></p> <p>23      A   -- in an acute intoxication situation.</p> <p>24      <b>Q   So the carboxy doesn't tell us anything about</b></p>	<p>1       <b>Q   Do you know if it could be as little as one</b></p> <p>2       <b>puff of a marijuana cigarette?</b></p> <p>3           MS. DINKLER: Objection to form.</p> <p>4       A   I do not know that.</p> <p>5       BY MR. DICELLO:</p> <p>6       <b>Q   This isn't a toxic level of marijuana you</b></p> <p>7       <b>found, is it?</b></p> <p>8       A   I would not agree with that.</p> <p>9       <b>Q   What does the medical literature say, Doctor,</b></p> <p>10      <b>it takes to rise to the level of being toxic in a human</b></p> <p>11      <b>being, marijuana?</b></p> <p>12      A   Are you saying toxic as the cause of death?</p> <p>13      <b>Q   Yeah.</b></p> <p>14      A   Killing you?</p> <p>15      <b>Q   Yeah.</b></p> <p>16      A   Oh, no, this is not a lethal number.</p> <p>17      <b>Q   Right.</b></p> <p>18      A   It doesn't mean it's not toxic. Toxic and</p> <p>19      lethal are not the same thing.</p> <p>20      <b>Q   How are you using the term "toxic," then?</b></p> <p>21      A   Toxic is having a -- is having a physiologic</p> <p>22      impact on your body.</p> <p>23      <b>Q   Oh.</b></p> <p>24      A   Speeding up your heart --</p>
<p style="text-align: center;">Page 118</p>	<p style="text-align: center;">Page 120</p>

Page 118

Page 120

Page 119

Page 121

<p>1   <b>consider whether an amount of marijuana is toxic or not?</b></p> <p>2           MS. DINKLER: Objection to form.</p> <p>3           A I know several toxicologists. I'm not going to</p> <p>4           opine on what they -- how they use the term "toxic."</p> <p>5           BY MR. DICELLO:</p> <p>6           <b>Q That's why I'm just trying to get an</b></p> <p>7           <b>understanding. When you are using the word "toxic" in</b></p> <p>8           <b>this deposition, I think what you're telling me is any</b></p> <p>9           <b>amount of marijuana in the system is toxic?</b></p> <p>10          A I do not know that for the -- for an</p> <p>11           individual. You may smoke a roach everyday and I may not</p> <p>12           be able to tell there's anything wrong with you; your</p> <p>13           heart rate may be the same, your breathing is the same.</p> <p>14           So in that setting, no, I would not stand and say you're</p> <p>15           toxic from marijuana, no.</p> <p>16          <b>Q I understand. But before we move on from this,</b></p> <p>17          <b>are you aware of any studies in the literature that</b></p> <p>18          <b>identify what a lethal level of marijuana is for an animal</b></p> <p>19          <b>or a human being?</b></p> <p>20          A Yeah, there have been lethal ingestions of</p> <p>21           marijuana, sure.</p> <p>22          <b>Q Can you cite me to one in the literature for a</b></p> <p>23          <b>human being?</b></p> <p>24          A Yeah.</p>	<p>1           <b>Q I guess my question, before I came in today,</b></p> <p>2           <b>was going to be to you, so I'll put it to you, there is no</b></p> <p>3           <b>documented case of marijuana ever killing anyone outside</b></p> <p>4           <b>the circumstances associated with smoking it, somebody</b></p> <p>5           <b>gets high and climbs a tree or something. I'm talking</b></p> <p>6           <b>there is no report of anyone ever having died from</b></p> <p>7           <b>marijuana ingestion; correct?</b></p> <p>8          A I do not know that to be true.</p> <p>9          <b>Q All right. You've never diagnosed someone as</b></p> <p>10         <b>having died from ingesting marijuana in your career;</b></p> <p>11         <b>correct?</b></p> <p>12          A No, not alone. That's right.</p> <p>13          <b>Q How many times have you included in an autopsy</b></p> <p>14         <b>that the physiological effects of ingesting marijuana</b></p> <p>15         <b>contributed to someone's death from a physiological basis?</b></p> <p>16          A I probably have a few times --</p> <p>17          <b>Q How many --</b></p> <p>18          A -- in multiple drug intoxications.</p> <p>19          <b>Q How many times where there wasn't multiple</b></p> <p>20         <b>other drugs on board have you ever found that someone died</b></p> <p>21         <b>or a contributing cause of death was the physiological</b></p> <p>22         <b>cause of ingesting marijuana?</b></p> <p>23          A I do not know that.</p> <p>24          <b>Q Robert Richardson is the only case; true?</b></p>
<p style="text-align: center;">Page 122</p>	<p style="text-align: center;">Page 124</p>

Page 122

Page 124

Page 123

Page 125

<p>1 MS. DINKLER: Objection to the form of the 2 question. It's misleading. 3 A I guess rephrase your question. I'm not sure 4 what you're asking me. 5 BY MR. DICELLO: 6 Q Well, first, I started down this road by trying 7 to ask you how many times you've included marijuana 8 ingestion as contributing to a physiological death in an 9 autopsy, and I think you said there's a handful, but there 10 were other drugs on board in those cases; correct? 11 A Usually. 12 Q And then I said, okay, well, how many times 13 have you included marijuana as contributing to the 14 physiological death process when there weren't other drugs 15 on board, and I don't think you could recall one other 16 than Mr. Richardson; fair? 17 A I said I do not recall. 18 Q Okay. 19 A I'm not saying there aren't other cases where I 20 have not used that as a cardiac stressor as a contributor 21 to a death. 22 Q Outside of just looking at all 3,700 autopsy 23 reports, there's no way to search that in your system? 24 A Not that specific kind of detail, no.</p>	<p>1 Q And even though more than 50 percent of the 2 autopsies you do you find evidence of marijuana ingestion, 3 you can't name a single one, other than Mr. Richardson, 4 where you've said that that -- the presence of that 5 contributed to cause the death; correct? 6 A I couldn't have named Mr. Richardson until 7 being identified to come talk about this. I mean, I don't 8 remember case by case like that. 9 Q Well, Doctor, if marijuana had the propensity 10 to contribute to causing people's death and you see it on 11 board in over 50 percent of the autopsies you perform, 12 wouldn't you expect that a substantial number of your 13 autopsies would include a finding that marijuana 14 contributed to the death? 15 A No. That doesn't make sense. 16 Q Because marijuana doesn't contribute to causing 17 people's deaths? 18 A No, because the people I see are dying of other 19 things: gunshot wounds, motor vehicle crashes, drownings. 20 Q All right. Did Mr. Richardson overdose on 21 marijuana? 22 A Once again, using the terminology "overdose," 23 are you saying lethal, that it killed him? 24 Q I think that's what overdose means.</p>
<p style="text-align: center;">Page 126</p>	<p style="text-align: center;">Page 128</p>

<p>1 event prior to ever being restrained, whether its a  2 cardiac event or whether he's just under the strong  3 influence of marijuana, I don't know. Or whether it's a  4 combination.</p> <p>5     <b>Q So you don't know.</b></p> <p>6     A It's clearly -- He's having something wrong  7 with him.</p> <p>8     <b>Q And you don't know if marijuana is contributing</b>  9 <b>to that or not?</b></p> <p>10    A I'm saying it is, yes.</p> <p>11    <b>Q Oh, okay. So it's your opinion to a reasonable</b>  12 <b>degree of medical certainty that marijuana contributed to</b>  13 <b>Mr. Richardson's --</b></p> <p>14    A Behavior.</p> <p>15    <b>Q -- initial event?</b></p> <p>16    A No, no. To his behavior.</p> <p>17    <b>Q His behavior?</b></p> <p>18    A Yeah.</p> <p>19    <b>Q And you're saying his behavior brought about</b>  20 <b>the restraint?</b></p> <p>21    A Well, absolutely.</p> <p>22    <b>Q So what evidence do you have of that, that the</b>  23 <b>marijuana was contributing to Mr. Richardson's behavior?</b></p> <p>24    <b>What evidence do you have?</b></p>	<p>1     A I think that --</p> <p>2                 MS. DINKLER: That is misleading.</p> <p>3                 Go ahead.</p> <p>4     A State it again, please.</p> <p>5     BY MR. DICELLO:</p> <p>6     <b>Q Well, you know, it's interesting that you were</b>  7 <b>about to answer until your counsel said it was a</b>  8 <b>misleading question. Is that true?</b></p> <p>9                 MS. DINKLER: Well --</p> <p>10    BY MR. DICELLO:</p> <p>11    <b>Q Is that true, that you were about to answer</b>  12 <b>until your attorney --</b></p> <p>13    A Yeah. Absolutely. Right.</p> <p>14    <b>Q So you know --</b></p> <p>15    A And someone else entered the conversation.</p> <p>16    <b>Q I know.</b></p> <p>17    A And now I'm interested in you rephrasing --</p> <p>18    <b>Q Right.</b></p> <p>19    A -- or hearing you say it again.</p> <p>20    <b>Q Right. I think that's called coaching the</b>  21 <b>witness in my line of work.</b></p> <p>22    MS. DINKLER: No, it's not. It's called you  23 leaving out a substantial part of his testimony that  24 you've asked him about multiple times over and over and</p>
<p style="text-align: center;">Page 130</p>	<p style="text-align: center;">Page 132</p>

<p>1 MS. DINKLER: Nick, I did not cut him off. If      2 he started to talk while I was talking, that was fate.      3 But I did not cut my witness off.</p> <p>4 MR. DICELLO: Well, I'd appreciate if you don't      5 object on the basis of misleading. Because I just don't      6 think that's -- I think that's a speaking objection,      7 Lynette.</p> <p>8 MS. DINKLER: You have your opinions and I've      9 got mine. Do you want the question read back for him to      10 answer?</p> <p>11 A I will delay my answers to allow for time      12 for --</p> <p>13 BY MR. DICELLO:</p> <p>14 Q <b>For your lawyer to tell you it's misleading or      not?</b></p> <p>16 MS. DINKLER: Listen. You're doing fine.      17 You're not the kid between --</p> <p>18 BY MR. DICELLO:</p> <p>19 Q <b>No, you're doing great.</b></p> <p>20 MS. DINKLER: -- the two parents who are      21 arguing here. You're fine.</p> <p>22 A Well, I just find it interesting that I'm      23 encouraged to make sure I understand your question, but      24 then when I ask for you to do that, then I'm being</p>	<p>1 about the need for restraint, which then contributed to      2 causing his death. Is that how you're including marijuana      3 in this?</p> <p>4 MS. DINKLER: Objection.</p> <p>5 A It brought about his behavior, requiring      6 restraint. And the exercise of a restraint, whether done      7 correctly or not, is a cardiac stressor. That's where I'm      8 coming from.</p> <p>9 BY MR. DICELLO:</p> <p>10 Q And outside of that, that marijuana you believe      11 contributed to his behavior to a reasonable degree of      12 medical certainty, outside of that, do you have any      13 evidence that marijuana contributed physiologically to      14 causing his death?</p> <p>15 MS. DINKLER: Objection.</p> <p>16 A Marijuana is a known cardiac stressor in some      17 individuals.</p> <p>18 BY MR. DICELLO:</p> <p>19 Q Do you have a conclusion to a reasonable degree      20 of medical certainty that it was a cardiac stressor in      21 whatever amount was ingested that you don't know in this      22 case?</p> <p>23 A I can't answer that. I don't have him hooked      24 up to an EKG machine when he's taking the dope.</p>
<p style="text-align: center;">Page 134</p>	<p style="text-align: center;">Page 135</p>

<p>1       <b>Q As soon as we get an answer to this question,</b>  2       <b>we'll take a break.</b></p> <p>3           MS. DINKLER: I'll tell you what. We're going  4       to take -- With all due respect, you don't have one  5       pending. He's taking a break.</p> <p>6           MR. DICELLO: Yes, I do. He just asked me to  7       rephrase it.</p> <p>8           MS. DINKLER: He said it's convoluted.  9           Do you need a break? I don't want you to --</p> <p>10          THE WITNESS: I can answer another question.</p> <p>11          MS. DINKLER: All right. Because I don't want  12       you to sit in here if you're having problems focusing.</p> <p>13          THE WITNESS: No, no. I'm fine. I'll be ready  14       for a break, but one more question --</p> <p>15          BY MR. DICELLO:</p> <p>16          <b>Q All right. Maybe I'm getting tired, too,</b>  17       <b>Doctor. But I think this is critical and it's important.</b>  18       <b>This is my one chance to ask you questions, and I've got</b>  19       <b>you here.</b></p> <p>20          MS. DINKLER: Move to strike.</p> <p>21          MR. DICELLO: Do I have another chance to ask  22       him questions?</p> <p>23          MS. DINKLER: You do. But we don't need all of  24       the lead-in. Just ask the question and let the man have a</p>	<p>1       <b>Q Okay.</b></p> <p>2           A I'm also saying that marijuana is a known  3       cardiac toxin, and he has preexisting heart disease. And  4       so from those two points, I consider the marijuana to be a  5       significant finding in this case.</p> <p>6          <b>Q But can you say to a reasonable degree of</b>  7       <b>medical certainty that it changed his heart rhythm?</b></p> <p>8           MS. DINKLER: This is the last question before  9       a break. This is not fair to the witness. It's not.</p> <p>10          A I cannot answer that yes or no. I don't know  11       what his heart is doing.</p> <p>12          BY MR. DICELLO:</p> <p>13          <b>Q Okay. That's all. Got it. Sorry about the</b>  14       <b>delay.</b></p> <p>15          (Recess taken.)</p> <p>16          BY MR. DICELLO:</p> <p>17          <b>Q Doctor, we're back on the record after an</b>  18       <b>overdue break. And I'm not sure with respect to this</b>  19       <b>marijuana issue if I ever did get an answer to the</b>  20       <b>question of whether you have an opinion to a reasonable</b>  21       <b>degree of medical certainty that Mr. Richardson overdosed</b>  22       <b>on marijuana.</b></p> <p>23          A Well, again, I think you need to define your  24       idea of "overdose," because you said a minute ago that you</p>
<p style="text-align: center;">Page 138</p>	<p style="text-align: center;">Page 140</p>

Page 138

Page 140

Page 139

Page 141

<p>1 nebulously to me.</p> <p>2       <b>Q What's nebulously about it?</b></p> <p>3       A I'm not trying to be -- I'm not trying to be --</p> <p>4       <b>Q The term overdose?</b></p> <p>5       A Well, just a minute ago you said that overdose</p> <p>6 means you die from it. Well, that's not my definition.</p> <p>7 That's not true. It's just not true.</p> <p>8       <b>Q So do you have a conclusion to a reasonable</b></p> <p>9 <b>degree of medical certainty that Mr. Richardson overdosed,</b></p> <p>10 <b>according to your definition, on marijuana?</b></p> <p>11      A He is -- I believe he is acting like he is</p> <p>12 toxic for marijuana by his behavior. And I think it is</p> <p>13 affecting his heart.</p> <p>14      <b>Q And that's --</b></p> <p>15      A Is that answering your question?</p> <p>16      <b>Q I mean, I'm not choosing the word "overdose",</b></p> <p>17 <b>am I, Doctor?</b></p> <p>18      MS. DINKLER: Objection.</p> <p>19      A I didn't write that.</p> <p>20      MS. DINKLER: That misstates the record.</p> <p>21      BY MR. DICELLO:</p> <p>22      <b>Q Who included "drug overdose" on the</b></p> <p>23 <b>supplemental medical certification that you signed?</b></p> <p>24      A When -- When you include a non -- I'm sorry, an</p>	<p>1       <b>Q So did a drug overdose cause his death?</b></p> <p>2       MS. DINKLER: Objection to form.</p> <p>3       A A drug plays a role in his death. It</p> <p>4 contributes to his death. And so how did the injury</p> <p>5 occur, why is it an accident. It's an accident because of</p> <p>6 the marijuana, okay? And so in the how injury occurred,</p> <p>7 drug overdose is the easiest way to say that. I could</p> <p>8 have put marijuana use. It would have been the same thing</p> <p>9 in my mind. How someone else interprets that, I don't</p> <p>10 have control over that.</p> <p>11      BY MR. DICELLO:</p> <p>12      <b>Q Okay. What injury was caused by the drug</b></p> <p>13 <b>overdose?</b></p> <p>14      A When I'm saying how injury occurred, that's</p> <p>15 just the -- that's just how the form is worded. That's</p> <p>16 not my wording.</p> <p>17      <b>Q I appreciate that, doctor. But I'm doing my</b></p> <p>18 <b>best to interpret this form. You told me that its purpose</b></p> <p>19 <b>is to communicate to the public how Mr. Richardson died.</b></p> <p>20 <b>You've included in this document, before you signed it,</b></p> <p>21 <b>that he was injured by a drug overdose. I'm asking you</b></p> <p>22 <b>what injury was caused by a drug overdose?</b></p> <p>23      A Again, back to it's creating him -- it's</p> <p>24 altering his behavior and it has the potential to be</p>
<p style="text-align: center;">Page 142</p>	<p style="text-align: center;">Page 144</p>

Page 142

Page 144

Page 143

Page 145

<p>1 MS. DINKLER: Objection to form. Please don't 2 interrupt him.</p> <p>3 Do you need the question read back?</p> <p>4 THE WITNESS: No.</p> <p>5 A So explaining manner of death. In a death 6 where there's any contributing factor, either immediate 7 cause of death or a contributing factor, that is of 8 unnatural means, then that -- that rules the manner. For 9 most people. Some people make exceptions on what's the 10 overwhelming picture, okay, even though there might be 11 unnatural means. But in general, if you have something 12 that is playing a role in the person's death that is not 13 natural disease, then it's not a natural death.</p> <p>14 BY MR. DICELLO:</p> <p>15 Q Okay.</p> <p>16 A If it's trauma, then it's, you know, then 17 that's the accidental. If it's a drug intoxication, 18 again, most of those are going to fall in the category of 19 accident, some of them fall in the category of suicide, a 20 tiny percentage fall in the category of homicide. Okay?</p> <p>21 Q Okay.</p> <p>22 A And then there's certain ones where you don't 23 know. But in the case of Robert Richardson, the reason I 24 am ruling it an accident as far as the manner is due to</p>	<p>1 <b>conduct of others, whether intentional or not?</b> 2 A At the hands of others? Do you want to use 3 that definition?</p> <p>4 <b>Q Whether intentional or unintentional?</b> 5 A Okay.</p> <p>6 MS. DINKLER: Objection to the form.</p> <p>7 A What about if you hit somebody with your car 8 going home and kill them? Is that a homicide? No, it is 9 not. That is ruled an accident, even if it's at your 10 hands, intentional or unintentional. Intentional, it 11 would be a homicide. Unintentional, it's an accident.</p> <p>12 BY MR. DICELLO:</p> <p>13 <b>Q What if I've blown the stop sign?</b> 14 A Accident.</p> <p>15 <b>Q Oh, okay.</b> 16 A You seem in disbelief to that. Do you see a 17 lot of motor vehicle accidents ruled homicides? Because I 18 don't. I don't see that.</p> <p>19 <b>Q Okay.</b> 20 MS. DINKLER: Nick, before you switch topics, 21 it's 5:24. Dr. Casto needs to be someplace. I need to be 22 someplace. We were planning on having another witness 23 after him today, so we weren't planning on this schedule. 24 And I'd like to be present when his deposition is</p>
<p style="text-align: center;">Page 146</p>	<p style="text-align: center;">Page 148</p>

<p>1 the marijuana.</p> <p>2 Q Okay.</p> <p>3 A Regardless if it's a natural plant or not, that 4 has nothing to do with my -- my logic on that, okay?</p> <p>5 <b>Q So the stress on the heart brought on by the 6 restraint was a result of the conduct of, I think in your 7 opinion, you would say both Mr. Richardson and the 8 corrections officers; true?</b></p> <p>9 A No. I would say he's requiring restraint based 10 on his behavior.</p> <p>11 <b>Q So you're making conclusions on whether the 12 restraint was appropriate?</b></p> <p>13 MS. DINKLER: Objection to form.</p> <p>14 A No, I'm not.</p> <p>15 BY MR. DICELLO:</p> <p>16 <b>Q I think you've told me the restraint 17 contributed to causing his death; correct?</b></p> <p>18 A From a point of exercise, yeah, or -- you know, 19 strenuous activity, yes.</p> <p>20 <b>Q So why isn't it ruled a homicide?</b></p> <p>21 A Well, you probably would have to go through 22 some scenarios to make this clear. This does not fall in 23 the category of homicide in my opinion.</p> <p>24 <b>Q Why not? Wasn't his death brought about by the</b></p>	<p>1 concluded. I am not available to do that tomorrow. And 2 so I just wanted to let you know what the lay of the land 3 was.</p> <p>4 BY MR. DICELLO:</p> <p>5 <b>Q Your original death certificate ruled the 6 manner of death natural; correct?</b></p> <p>7 A That's correct. That was five days after the 8 autopsy.</p> <p>9 <b>Q And you didn't conclude cardiac arrhythmia; 10 correct?</b></p> <p>11 A I still had the same cause of death, I just 12 didn't have the mechanism in there. I listed hypertensive 13 arteriosclerotic cardiovascular disease, which is the 14 underlying cause of death on the supplemental. I just 15 didn't have the mechanism as cardiac arrhythmia.</p> <p>16 <b>Q Okay.</b></p> <p>17 A And it's natural, because at this point we 18 don't know about the marijuana. That comes weeks later, 19 okay? Toxicology takes time.</p> <p>20 <b>Q But at the point where you completed the 21 original death certificate on May 25th, 2012, you hadn't 22 yet looked at the video; true?</b></p> <p>23 MS. DINKLER: Asked and answered.</p> <p>24 A Correct.</p>
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<p>1 BY MR. DICELLO:</p> <p>2 Q And the toxicology reports weren't returned</p> <p>3 yet; correct?</p> <p>4 A That's right.</p> <p>5 Q But you did know that he died as a result of</p> <p>6 the stress on his heart as a result of the restraint with</p> <p>7 the officers; correct?</p> <p>8 MS. DINKLER: Objection to form.</p> <p>9 A Yeah, I understand that.</p> <p>10 BY MR. DICELLO:</p> <p>11 Q All right. But it was still just his natural</p> <p>12 disease process that caused his death?</p> <p>13 A That's right. And I can provide you scenarios</p> <p>14 where I would not call that natural.</p> <p>15 Q You have the time of injury due to drug</p> <p>16 overdose occurring at 4:00 p.m. What evidence do you have</p> <p>17 to support that, Doctor?</p> <p>18 A Oh, what time was he pronounced here?</p> <p>19 Q 16:08. So what injury --</p> <p>20 A So 4:00.</p> <p>21 Q What injury --</p> <p>22 A Okay, that's just --</p> <p>23 Q Let me finish my question.</p> <p>24 A Sorry.</p>	<p>1 A Oh, no, it's detectable. We see that all day.</p> <p>2 Q So why do you think there was no detectable</p> <p>3 level of Ativan or lorazepam in this case?</p> <p>4 A Because he is receiving an injection in either</p> <p>5 fat or muscle, okay? So that does not have immediate</p> <p>6 access to the blood. In other words, you don't push it in</p> <p>7 the fat and muscle and then all of a sudden it goes right</p> <p>8 into the blood system where you can detect it. It takes</p> <p>9 time to diffuse into the blood system. And he died</p> <p>10 shortly after that injection. So my opinion is that it</p> <p>11 just has not had time to reach the detectable level in his</p> <p>12 blood, because of his short time of survival after the</p> <p>13 injection.</p> <p>14 Q And if this is outside of your area of</p> <p>15 expertise, let me know. But as a forensic pathologist,</p> <p>16 you kind of have to look at a lot of disciplines</p> <p>17 sometimes.</p> <p>18 A That's correct.</p> <p>19 Q But given the fact that you -- the drug had not</p> <p>20 made it from the musculature or the tissue into the blood</p> <p>21 yet, would you expect that drug to have any effect on the</p> <p>22 patient?</p> <p>23 A No.</p> <p>24 Q So the lorazepam that was administered had no</p>
<p style="text-align: center;">Page 150</p>	<p style="text-align: center;">Page 152</p>

<p>1 Q What injury did the patient experience four</p> <p>2 minutes before he died as a result of a drug overdose?</p> <p>3 MS. DINKLER: Objection to form.</p> <p>4 Go ahead.</p> <p>5 A You're splitting hairs regarding this form,</p> <p>6 okay?</p> <p>7 BY MR. DICELLO:</p> <p>8 Q All right.</p> <p>9 A The 16:00 hours is just, that's near the time</p> <p>10 he's pronounced. That by no means is meant to say that</p> <p>11 somehow I know he ingested the marijuana at 16:00 hours or</p> <p>12 that he became toxic at 16:00 hours. That's not the</p> <p>13 purpose.</p> <p>14 Q So what happened at 16:00 hours?</p> <p>15 A Well, he's just about dead.</p> <p>16 Q The toxicology reports, from what I saw, don't</p> <p>17 show any lorazepam on board.</p> <p>18 A That's right.</p> <p>19 Q Why do you think that is, given that they</p> <p>20 injected it?</p> <p>21 A Because it's not detectable.</p> <p>22 Q Was it tested for, or no?</p> <p>23 A Oh, yeah.</p> <p>24 Q Just Ativan isn't detectable in the blood?</p>	<p>1 effect on Mr. Richardson; correct?</p> <p>2 A That's my opinion.</p> <p>3 MR. DICELLO: Can we go off the record for a</p> <p>4 minute?</p> <p>5 (Discussion held off the record.)</p> <p>6 BY MR. DICELLO:</p> <p>7 Q I just want to say something. And I understand</p> <p>8 people's scheduling issues, and I'm not trying to be</p> <p>9 difficult about scheduling, Doctor, but it was my</p> <p>10 intention to take your deposition from start to finish</p> <p>11 today. Sometimes they take a long time, sometimes they're</p> <p>12 quick. This one is taking a long time. You know, I take</p> <p>13 responsibility for that. But I've got questions about</p> <p>14 things that are at issue I believe in this case.</p> <p>15 MR. DICELLO: And I was not ever told that</p> <p>16 there would be a stop time today where we couldn't get his</p> <p>17 deposition scheduled.</p> <p>18 MS. DINKLER: Nick, you scheduled a deposition</p> <p>19 after this deposition. So is it unfair for me to presume</p> <p>20 that his deposition is going to be completed as the second</p> <p>21 of three depositions today before the close of business?</p> <p>22 MR. DICELLO: Well --</p> <p>23 MS. DINKLER: That was your schedule. That</p> <p>24 wasn't something that we imposed on you. You represented</p>
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1 that you were going to do three depositions today. So  
 2 please don't act like we're denying you the opportunity to  
 3 finish his deposition when it's 5:30 and I have child care  
 4 arrangements that I need to make for my three children,  
 5 which I had no reason to do when he's one of two and he's  
 6 in the middle.

7 You weren't planning on being here until ten  
 8 o'clock. I know I'm joining the party because I was out  
 9 for surgery, but have you all been working until ten  
 10 o'clock at night?

11 MR. DICELLO: Well, I don't think I was making  
 12 that suggestion, but --

13 MS. DINKLER: Well, I don't know what  
 14 suggestion you're making, then. I mean, we had damage  
 15 depositions set up that we were expecting to take when,  
 16 tomorrow?

17 MR. PREGON: Thursday.

18 MS. DINKLER: Thursday? That we learned today  
 19 are not showing up, depriving us of the ability to explore  
 20 what the damages are in this case. And that's something  
 21 that the defense lawyers want to talk about. I'm sure  
 22 we'll work through it. But please don't cast us versions  
 23 that we're not going to be able to get this deposition  
 24 done because Mr. Casto and I have to leave at 5:30.

Page 154

1 MR. DICELLO: Well, I have to come back down  
 2 here, unless, you know --  
 3 MS. DINKLER: Well, you're going to have to  
 4 come back down here for all of the mothers of the children  
 5 in this case that we were supposed to depose this week  
 6 that you said you were producing that you've told Jamey  
 7 you're not producing now this week. So we're going to be  
 8 together --

9 MR. DICELLO: I've had open conversation with  
 10 the other side as to my ability to obtain these people.  
 11 And I told Jamey last week that I expect to be able to  
 12 have a couple, I don't know if I will, but at a minimum  
 13 we'll be able to do the parents and the grandparents. And  
 14 that's what we're doing. I've been open about  
 15 communicating that. I don't have full control over these  
 16 people.

17 MS. DINKLER: Well, we need to subpoena these  
 18 people so that we can get some idea on damages. We don't  
 19 have any paper on damages, we're not getting witnesses  
 20 that we need to get for damages.

21 MR. DICELLO: So to let the doctor go, can we  
 22 agree on the record that subject to everyone's calendar to  
 23 get him back under deposition --

24 MS. DINKLER: You have my word that he will be

Page 155

1 MR. DICELLO: I've got to be honest, I have no  
 2 idea what you're talking about with these other  
 3 witnesses. But let's not waste the doctor's time. I just  
 4 want the record to say that, yes, in the past weeks before  
 5 you got involved, Lynnette, yes, we have gone past 5:30  
 6 and we have rescheduled people for the following day. And  
 7 we've done the best we can. And that's why I've scheduled  
 8 Ms. Smiley, as we discussed, that as somebody who is not  
 9 all that important, and if we couldn't get to her that we  
 10 wouldn't. I'm not trying to say this is intentional in  
 11 any way. It is what it is. But I just want the record to  
 12 reflect that I am here prepared to conclude this  
 13 deposition and avoid the cost and expense of calling  
 14 Dr. Casto for a second deposition, and I was never  
 15 notified that everybody had a 5:30 deadline today. And  
 16 that's all I'm saying. I'm not trying to say you did it  
 17 intentionally or it's --

18 MS. DINKLER: Well, I don't have an obligation  
 19 to notify you that I need to be somewhere at 5:30 when  
 20 you're planning on doing him as number two out of three  
 21 witnesses. Likewise, I wouldn't have expected him to have  
 22 to be here beyond 5:30, to even ask him that. We're happy  
 23 to reschedule it. I have no idea what additional expense  
 24 you're going to incur by having him back.

Page 155

1 produced as he was today to finish his deposition. It is  
 2 that simple.

3 MR. DICELLO: I'm just trying to get an  
 4 agreement on the record that given that his deposition  
 5 testimony is critical to expert witness reports that I  
 6 have to produce by early January, that subject to making  
 7 him available for deposition --

8 MS. DINKLER: I have a doctor's appointment  
 9 tomorrow that I cannot cancel. I will reproduce him as  
 10 quickly as possible so that you can finish. We have  
 11 worked with you on scheduling and we will continue to do  
 12 that.

13 MR. DICELLO: Okay. That's all I wanted to  
 14 say.

15 MS. DINKLER: But I'm not --

16 MR. DICELLO: Can we get some reprieve on the  
 17 January 4th deadline for Plaintiff's expert reports  
 18 assuming we can't complete the doctor's deposition?

19 MS. DINKLER: Yeah, we'll have him -- we can  
 20 work something out.

21 MR. DICELLO: Okay. That's all I wanted to  
 22 know.

23 MS. DINKLER: But we just need to do that with  
 24 Tina, because I have to leave and he has to leave.

Page 157

1 MR. DICELLO: Doctor, thank you. Pleasure  
 2 meeting you. I look forward to seeing you again.  
 3 THE WITNESS: Thank you.  
 4 - - -  
 5 (Signature not waived.)  
 6 - - -  
 7 And, thereupon, the deposition was concluded at  
 8 5:34 p.m.  
 9 - - -  
 10  
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Page 158

1 State of \_\_\_\_\_  
 2 County of \_\_\_\_\_  
 3 I, BRYAN CASTO, M.D., do hereby certify that I  
 4 have read the foregoing transcript of my deposition given  
 5 on December 7, 2015; that together with the correction  
 6 page attached hereto noting changes in form or substance,  
 7 if any, it is true and correct.  
 8 \_\_\_\_\_  
 9 BRYAN CASTO, M.D.  
 10 I do hereby certify that the foregoing transcript  
 11 of the deposition of BRYAN CASTO, M.D. was submitted to  
 12 the witness for reading and signing; that after he had  
 13 stated to the undersigned Notary Public that he had read  
 14 and examined his deposition, he signed the same in my  
 15 presence on the \_\_\_\_ day of \_\_\_\_\_, 2015.  
 16 \_\_\_\_\_  
 17 Notary Public  
 18 My Commission Expires on \_\_\_\_\_  
 19 - - -  
 20  
 21  
 22  
 23  
 24

Page 160

1 December 14, 2015  
 2 Dear Dr. Casto,  
 3 You have chosen to read and sign your transcript.  
 4 Please do not mark on the transcript. Any  
 5 corrections/changes you may desire to make in your  
 6 testimony should be typewritten or printed on the errata  
 7 sheet at the end of testimony, giving the page number,  
 8 line number and desired correction/change. After you have  
 9 read the transcript, sign your name on the correction  
 10 sheet and where indicated at the close of testimony before  
 11 a notary public.  
 12 The Rules of Civil Procedure allow thirty days for  
 13 you to read and sign. Please return the signature page  
 14 and errata sheet to Whitney Layne, 6723 Cooperstone Drive,  
 15 Dublin, Ohio 43017 within that time. Failure to do so in  
 16 the allotted time will result in your transcript being  
 17 used as though read and signed by you.  
 18 Sincerely,  
 19 \_\_\_\_\_  
 20 Whitney Layne  
 21 Professional Reporter  
 22  
 23 Cc:  
 24 Nick DiCello  
 Carrie Starts  
 Jamey Pregon

Page 159

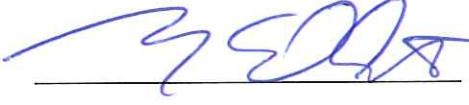
Page 160

1 State of Ohio

2 County of Montgomery

3 I, BRYAN CASTO, M.D., do hereby certify that I  
4 have read the foregoing transcript of my deposition given  
5 on December 7, 2015; that together with the correction  
6 page attached hereto noting changes in form or substance,  
7 if any, it is true and correct.

8

9   
BRYAN CASTO, M.D.

10 I do hereby certify that the foregoing transcript  
11 of the deposition of BRYAN CASTO, M.D. was submitted to  
12 the witness for reading and signing; that after he had  
13 stated to the undersigned Notary Public that he had read  
14 and examined his deposition, he signed the same in my  
15 presence on the 17<sup>th</sup> day of Dec, 2015.

16

Lora Chenoweth

17

Notary Public

18 My Commission Expires on

July 16, 2017

- - -

LORA L. CHENOWETH, Notary Public  
In and for the State of Ohio  
My Commission Expires July 16, 2017

21

22

23

24



Page 161

1 TO THE REPORTER:

2 I have read the entire transcript of my deposition taken  
3 on the 7th day of Dec, 2015, or the same has been  
4 read to me. I request that the following changes be  
5 entered upon the record for the reasons indicated.

6

7 Page Line Correction and reason therefore

8 5 10 "Douglass" (spelling)

9 40 11 "Restraint deaths" rather than "Restraint to deaths"

10 48 8-9 "Forensic pathologist" not "for the pathologist"

11 99 17-18 "disease as a cause of death"

12 123 2 "Baselt" (spelling)

13 142 12 "Toxic from marijuana" (grammar)

14

15

16

17

18

19

20

21

22

23 Date 12-17-2015 Signature



24

Bryan D. Casto

Page 162

1 CERTIFICATE

2 State of Ohio : :

3 County of Franklin:

4

5 I, Whitney Layne, Notary Public in and for the  
6 State of Ohio, duly commissioned and qualified, certify  
7 that the within named BRYAN CASTO, M.D. was by me duly  
8 sworn to testify to the whole truth in the cause  
9 aforesaid; that the testimony was taken down by me in  
10 stenotype in the presence of said witness; afterwards  
11 transcribed upon a computer; that the foregoing is a true  
12 and correct transcript of the testimony given by said  
13 witness taken at the time and place in the foregoing  
14 caption specified.

15

16 IN WITNESS WHEREOF, I have set my hand and  
17 affixed my seal of office at Dublin, Ohio, on this 14th  
18 day of December, 2015.

19   
Whitney Layne

20 Whitney Layne, Notary Public

21 In and for the State of Ohio

22 My Commission expires May 4, 2020

23

24

<p><b>A</b></p> <p><b>a.m</b> 91:5  <b>AAFS</b> 61:21  <b>abandoned</b> 61:10  <b>abdomen</b> 80:16    85:20  <b>ability</b> 81:23 82:20    117:19 129:11    154:19 156:10  <b>able</b> 38:9 49:1 57:4    61:20 96:10    103:21 122:12    131:9 154:23    156:11,13  <b>absolutely</b> 19:20    67:8 88:21 130:21    132:13  <b>abundant</b> 109:22  <b>Academy</b> 58:17    61:16  <b>accept</b> 81:11 96:9  <b>acceptable</b> 133:18    133:19  <b>accepting</b> 129:12  <b>access</b> 37:10,13    40:1 60:21 63:13    64:5 152:6  <b>accident</b> 58:9 144:5    144:5 145:11,16    146:19,24 148:9    148:11,14  <b>accidental</b> 146:17  <b>accidentally</b> 145:4  <b>accidents</b> 148:17  <b>accommodate</b>    18:19  <b>account</b> 131:14,16  <b>accounts</b> 26:13,20    27:7,15 28:9,17    113:14  <b>accurate</b> 33:7  <b>accurately</b> 33:5  <b>acquired</b> 26:23  <b>act</b> 154:2  <b>acting</b> 131:1 142:11  <b>activities</b> 66:14  <b>activity</b> 114:24    147:19  <b>actual</b> 18:12 39:22    71:22 95:3,11  <b>acute</b> 117:4,5    118:23  <b>acutely</b> 117:12  <b>addition</b> 43:14    61:21 63:6,8  <b>additional</b> 155:23  <b>address</b> 133:16  <b>adhere</b> 64:3  <b>administered</b> 91:7    152:24</p>	<p><b>administrator</b> 1:4    91:3,17  <b>admission</b> 24:15  <b>adult</b> 75:10,24  <b>adults</b> 75:17  <b>advance</b> 23:22 24:9    36:22 38:12 55:24    68:5  <b>advice</b> 10:16 13:9    13:16,21  <b>affect</b> 139:4  <b>affixed</b> 162:17  <b>afforded</b> 7:9  <b>aforesaid</b> 162:9  <b>African</b> 68:12  <b>afternoon</b> 5:6,7  <b>age</b> 100:2,10 107:4  <b>agitated</b> 129:14    131:1  <b>ago</b> 25:23 33:3,4    38:17 112:8 119:5    140:24 142:5  <b>agree</b> 39:2,3 43:15    64:7 84:21 85:4    97:19,21,23 98:8    99:12 100:10    102:13,17 103:10    106:20 107:22    108:9 113:10    118:16 120:8    121:7 156:22  <b>agreed</b> 80:3 125:17  <b>agreement</b> 157:4  <b>ahead</b> 7:4,13,24    8:12 12:9 21:24    28:21 30:9 32:10    35:10 36:18 41:20    54:7 72:14 82:15    85:8 87:21 90:7    91:14 95:14 98:21    108:20 109:7    113:23 114:18    115:24 116:4    132:3 145:14    151:4  <b>air</b> 88:18 89:4  <b>al</b> 1:9  <b>allotted</b> 159:10  <b>allow</b> 134:11 159:8  <b>allowed</b> 19:24  <b>alongside</b> 117:17  <b>altered</b> 139:23  <b>altering</b> 144:24  <b>AMA</b> 34:19 35:3,22  <b>American</b> 34:15,16    58:17 61:9,16    68:12 97:10  <b>amount</b> 121:8,16    122:1,9 136:21    137:4,16 139:14  <b>analysis</b> 78:19</p>	<p><b>analyte</b> 119:12  <b>analytes</b> 118:9  <b>anatomic</b> 60:3,22    60:24  <b>anatomical</b> 106:19  <b>and/or</b> 79:4  <b>Andrew</b> 1:5  <b>animal</b> 122:18  <b>answer</b> 10:10,21    11:1,10,12,16  <b>argue</b> 31:12 135:12  <b>arguing</b> 134:21  <b>argument</b> 32:17  <b>arrangement</b> 23:7  <b>arrangements</b>    154:4  <b>arrythmia</b> 79:6,11    79:15,22 109:14    149:9,15  <b>arrythmia</b> 107:22    108:16  <b>arteries</b> 106:12  <b>arteriosclerotic</b>    93:10 105:8    106:15 149:13  <b>artery</b> 98:4 100:18    100:21,24 101:4,7    101:9,9,14,20,23    102:3,18,21,22    104:24  <b>article</b> 42:23  <b>articles</b> 37:16 38:3    38:13 39:22,23    40:1,14,16 43:3  <b>asked</b> 19:8,12 21:9    23:5,8 36:7 38:23    39:2 44:8 54:6    71:5 75:1 89:1    90:6 98:12,17    114:17 115:9,19    115:20 116:24    127:5 132:24    137:12 138:6    141:5,12 149:23  <b>asking</b> 9:4 22:4 32:1    76:22 107:12    112:8 116:7 126:4    139:10 144:21  <b>asks</b> 133:21  <b>asphyxia</b> 40:12 75:6    75:9,24 76:3,3,4    76:11,20 79:4,4,6    79:10,11,24 80:1    80:6,8,13 81:5,9    81:17,21,21 82:1    82:7,7,18,21 83:1    83:4,11,16 85:2,5    85:13,17 86:8    87:17,17,19 88:2    112:6  <b>asphyxias</b> 76:13  <b>asphyxiation</b> 55:3,5    81:2,15 85:24    86:18,19 87:1,7    87:11 88:3,7,16    88:24 89:6,10    112:24  <b>assigned</b> 71:3,11  <b>approximating</b> 70:17  <b>associated</b> 59:3    79:11 80:1 124:4</p>	<p><b>ASSOCIATES</b> 1:21  <b>association</b> 34:15    34:17 35:22 58:18    63:24  <b>assume</b> 23:9 30:10    69:8 112:16    118:15  <b>assumes</b> 7:2 30:7    68:1  <b>assuming</b> 157:18  <b>ate</b> 145:9  <b>atherosclerosis</b>    104:12,20 105:18  <b>atherosclerotic</b>    100:17 105:16    107:4  <b>Ativan</b> 91:7,22    151:24 152:3  <b>attached</b> 14:20,20    160:6  <b>attack</b> 33:23  <b>attempt</b> 59:18  <b>attend</b> 67:7,14 69:1  <b>attends</b> 68:20 71:17  <b>attorney</b> 5:23 7:19    8:13,17 9:9 12:23    22:15 49:16,18    67:20 132:12  <b>attorney/client</b> 8:18    8:22 10:19 12:7    42:2,7  <b>attorneys</b> 7:6 9:4    18:13 19:11 33:11    36:15 52:10 53:1    54:4  <b>atypical</b> 7:18  <b>audibly</b> 22:21  <b>authored</b> 30:15    90:19  <b>authors</b> 29:8 33:21    37:11 38:21  <b>autopsies</b> 25:10    56:16,21 57:5    58:8 67:7,14 75:2    127:21 128:2,11    128:13  <b>autopsy</b> 14:18 16:1    19:6 25:6 26:3    27:8 34:7 36:6,23    37:6 38:6,8 55:19    56:2 64:1 68:6,13    68:21 69:1,10    70:13,15 71:13,16    71:18,22 74:17    75:10,24 76:3,11    83:15,15,23 90:3    90:20 92:18 94:14    101:17 104:13    107:1 109:16,17    111:16,21 112:22    124:13 125:4</p>
---	--	--	---

126:9,22 149:8	139:17 142:11	140:9,18	<b>cardiovascular</b>	144:12,22 150:12
<b>autopsy's</b> 95:3	153:14	<b>breakdown</b> 119:2	93:10 99:4,10,13	<b>causes</b> 20:13
<b>available</b> 18:15	<b>believed</b> 43:12	<b>breathe</b> 81:23 82:20	99:14,17 100:1	<b>causing</b> 81:5 107:13
71:20,21 72:3	105:5	89:8,15	149:13	108:16 109:2,13
149:1 157:7	<b>belly</b> 80:12,16,19	<b>breathing</b> 80:23	<b>care</b> 89:23 90:5	125:15 127:4
<b>Avenue</b> 1:16 2:3,8	<b>benefit</b> 55:16 93:12	86:14 88:6,8,23	154:3	128:10,16 129:16
<b>average</b> 110:6,11	<b>Bernard</b> 39:7	122:13	<b>career</b> 21:6 29:23	136:2,14 139:22
<b>avoid</b> 155:13	<b>best</b> 28:14 30:11	<b>Brenda</b> 2:16	30:4 65:21 124:10	147:17
<b>aware</b> 7:11,14 9:9	32:2 64:3 70:6	<b>bring</b> 9:21 10:2	125:16	<b>Cc</b> 159:14
21:6 22:11 30:14	71:15 84:13	13:18,22 42:7,8	<b>careful</b> 77:17	<b>cell</b> 114:22
35:6,11,24 44:11	144:18 155:7	44:8,9,12 46:4	<b>Carrie</b> 2:11 159:15	<b>certain</b> 80:1,22
82:24 103:14,16	<b>bet</b> 129:4	127:2	<b>case</b> 1:7 7:10 8:8,15	96:17 116:16
122:17 123:17	<b>better</b> 104:13	<b>bringing</b> 47:3	9:5 10:18,19	146:22
	119:11	<b>brought</b> 9:13 10:5	12:21 14:4 16:16	<b>certainly</b> 85:9
<b>B</b>	<b>Betz</b> 65:16	13:11,22 14:6	19:23 20:17 21:16	<b>certainty</b> 31:6,21
<b>back</b> 12:3 17:11	<b>Beyoglides</b> 1:4	15:5 41:1 42:8	32:5,12 33:13	32:5,12 33:13
20:19 26:10 40:23	<b>beyond</b> 62:22	43:11 44:16 46:15	109:13 114:4,11	109:13 114:4,11
41:5 56:5 68:10	155:22	47:7 55:13 93:16	114:14 115:5,18	114:14 115:5,18
68:11 80:18 83:3	<b>bias</b> 30:6,11,12	94:22 130:19	116:21 117:15	116:21 117:15
84:3 85:1 87:22	<b>big</b> 76:6 80:12	131:21,21 135:24	118:4,7 119:21	118:4,7 119:21
101:10,15 116:6	97:18 102:10	136:5 147:5,24	129:15 130:12	129:15 130:12
121:19 133:10,11	<b>bigger</b> 80:15	<b>Bryan</b> 1:14 3:5 4:2	136:12,20 137:4	136:12,20 137:4
134:9 140:17	<b>bit</b> 47:9 100:14	5:1,10 160:3,9,11	137:16 139:6,12	137:16 139:6,12
144:23 146:3	107:16 133:12	162:7	140:7,21 141:15	140:7,21 141:15
155:24 156:1,4,23	<b>block</b> 105:1	<b>business</b> 52:19	141:19 142:9	141:19 142:9
<b>background</b> 47:8	<b>blocks</b> 17:16,17,18	97:17 153:21	<b>certificate</b> 93:3,6,9	<b>certificate</b> 93:3,6,9
<b>backing</b> 111:6,10	18:1		149:5,21 162:1	149:5,21 162:1
<b>bad</b> 46:2	<b>blood</b> 102:17	<b>C</b>	<b>certificates</b> 25:10	<b>certificates</b> 25:10
<b>ball</b> 115:15	109:22 111:4,6,9	<b>C-A-S-T-O</b> 5:10	<b>certification</b> 58:23	<b>certification</b> 58:23
<b>Basalt</b> 123:4	117:11 119:23	<b>C-H-A-N</b> 29:14	59:1,8,20 60:12	59:1,8,20 60:12
<b>Basalt's</b> 123:2	123:12 151:24	<b>cage</b> 80:19	60:13,22 61:1,5	60:13,22 61:1,5
<b>based</b> 75:1 78:19	152:6,8,9,12,20	<b>calendar</b> 156:22	61:11 142:23	61:11 142:23
98:11 105:22	<b>blown</b> 148:13	<b>call</b> 6:16 20:19 70:3	143:17	143:17
139:20 147:9	<b>board</b> 58:21,23 59:1	99:4 105:17,17	<b>cast</b> 154:22	<b>certified</b> 5:3 58:21
<b>bases</b> 133:19	59:8,20 60:11,13	150:14	160:3,10	<b>certify</b> 160:3,10
<b>basic</b> 70:6 141:7	60:21 61:1,4,8,9	<b>called</b> 1:14 3:5	162:6	162:6
<b>basically</b> 25:13	61:10 124:20	38:16 46:5 62:1	<b>challenge</b> 91:20	<b>challenge</b> 91:20
48:10 62:3 96:24	126:10,15 128:11	89:24 132:20,22	<b>Chan</b> 29:14 39:21	<b>Chan</b> 29:14 39:21
<b>basis</b> 63:17 65:24	131:8,11 151:17	<b>calling</b> 155:13	<b>chance</b> 5:12 138:18	<b>chance</b> 5:12 138:18
66:2,16 124:15	<b>boards</b> 60:18,19	<b>calls</b> 22:12 64:15	138:21	138:21
127:10 134:5	<b>body</b> 80:17 86:20	<b>camp</b> 30:20 32:21	<b>changed</b> 140:7	<b>changed</b> 140:7
<b>Bates</b> 77:9	119:9 120:22	<b>cancel</b> 157:9	<b>changes</b> 34:23	<b>changes</b> 34:23
<b>Bear</b> 100:15	121:17	<b>caption</b> 162:14	160:6 161:4	160:6 161:4
<b>beating</b> 108:7	<b>Boehringer</b> 2:15	<b>captures</b> 95:2	<b>character</b> 3:8	<b>character</b> 3:8
<b>bed</b> 82:8	<b>book</b> 30:15,16,17	<b>car</b> 82:9 148:7	<b>charge</b> 48:10	<b>charge</b> 48:10
<b>began</b> 114:21	35:18 39:13	<b>carboxy</b> 118:24	<b>check</b> 62:1	<b>check</b> 62:1
<b>begins</b> 71:13	<b>bottom</b> 14:15 55:8	119:3	<b>child</b> 154:3	<b>child</b> 154:3
<b>behalf</b> 2:5,9,14 20:9	77:9,10	<b>card</b> 15:21	<b>children</b> 154:4	<b>children</b> 154:4
27:24	<b>boy</b> 29:11	<b>cardiac</b> 51:14 85:16	156:4	156:4
<b>behavior</b> 130:14,16	<b>Brannon</b> 49:21,22	103:3 107:20	<b>chimney</b> 82:10,12	<b>chimney</b> 82:10,12
130:17,19,23	49:24 50:5,10,17	111:24 112:7	<b>choosing</b> 142:16	<b>choosing</b> 142:16
131:12,14,17,21	50:19 51:17 52:6	113:7,16 126:20	<b>chosen</b> 33:17 159:3	<b>chosen</b> 33:17 159:3
135:24 136:5,11	53:1,15,17,21	129:10 130:2	<b>chronic</b> 107:6,8	<b>chronic</b> 107:6,8
139:7,23 142:12	54:13	136:7,16,20	111:12 119:6	111:12 119:6
144:24 147:10	<b>Brannon's</b> 51:23	139:17 140:3	127:9	127:9
<b>believe</b> 16:16 24:10	52:7	145:1 149:9,15	<b>cigarette</b> 120:2	<b>cigarette</b> 120:2
27:8 29:15,15	<b>break</b> 11:24 23:17	<b>cardiologist-type</b>	<b>Cincinnati</b> 2:14	<b>Cincinnati</b> 2:14
30:21 51:5 56:10	23:19 40:19 45:22	97:16	<b>circulation</b> 100:23	<b>circulation</b> 100:23
78:15 104:24	133:11,15 135:19	<b>cardiology</b> 105:12	101:6	101:6
108:23 121:10	137:12 138:2,5,9	<b>cardiomegaly</b> 86:24	<b>circumflex</b> 101:12	<b>circumflex</b> 101:12
135:24 136:10	138:14 139:1	87:3 99:5	<b>circumstance</b> 21:6	<b>circumstance</b> 21:6

<b>circumstances</b>	<b>commonly</b>	<b>connection</b>	<b>conversations</b>	118:16 119:13,18
34:13 53:12 71:15 72:8,12 83:22 84:2,11,22 95:8 124:4	14:20 99:17	5:20 36:11 50:16 51:3 54:2 108:13	<b>convoluted</b>	119:19 123:5
<b>citation</b>	<b>communicate</b>	<b>consider</b>	<b>Cooperstone</b>	124:7,11 125:24
29:7	144:19	64:13 76:19 80:2 83:21 84:10,19 88:17	1:21 159:9	126:10 127:4,22
<b>citations</b>	<b>communicating</b>	95:7 106:5 110:4 110:6 122:1 140:4	<b>copied</b>	128:5 131:23
<b>cite</b>	156:15	<b>considering</b>	43:18 44:5 copy	137:6,19 143:17
29:6 122:22	<b>communication</b>	83:23 consistent	16:9 44:24 54:17 92:11 93:19	143:19,20 147:17
<b>city</b>	10:20 43:21 44:6	7:1 87:6 87:10,12 88:1,2,7	93:22 95:11,18,24 96:6,13	149:6,7,10,24
129:4	<b>communications</b>	111:18 113:9	<b>coronary</b>	150:3,7 152:18
<b>civil</b>	8:18 44:12	<b>constellation</b>	98:4 100:21,24 101:4,7	153:1 160:7
1:15 3:6 8:23 8:24 10:18 11:9 159:8	<b>community</b>	88:15,24 89:6,9 103:5 104:6,12,12	162:12	
<b>claim</b>	<b>company</b>	10:23 <b>compensation</b>	<b>correction</b>	27:7,15
27:24	89:24	60:14 competency	28:4,17 74:7	
<b>clarification</b>	<b>compensation</b>	61:5 <b>competent</b>	159:6 160:5 161:7	
11:14 71:8	6:23	64:7 <b>complaint</b>	<b>correction/change</b>	
<b>classification</b>	<b>completed</b>	45:6 complete	159:5	
105:13	26:3	78:7,20 157:18	<b>correctional</b>	91:10
<b>clear</b>	<b>completed</b>	<b>completed</b>	<b>corrections</b>	26:12
12:6 22:24 34:12 57:18 147:22	47:24 149:20 153:20	24:21	26:16 27:4 58:1	
<b>clearly</b>	<b>component</b>	<b>component</b>	65:17 66:1 74:3	
130:6	102:21 118:20	102:21 118:20	91:23 107:12	
<b>Cleveland</b>	<b>compromised</b>	<b>compromised</b>	114:15 115:8	
2:4 129:4	102:18,23	102:18,23	116:22 147:8	
<b>client</b>	<b>computer</b>	<b>computer</b>	<b>corrections/chang...</b>	
45:16	56:24 57:6,10 162:11	56:24 57:6,10 162:11	159:4	
<b>client's</b>	<b>concept</b>	<b>concept</b>	<b>correctly</b>	80:12
7:20	97:17	97:17	136:7	
<b>climbs</b>	<b>concerning</b>	<b>concerning</b>	<b>correspondence</b>	
124:5	111:21	111:21	44:15	
<b>clinical</b>	<b>conclude</b>	<b>conclude</b>	<b>cost</b>	155:13
60:23	149:9	149:9 155:12	<b>counsel</b>	3:4 8:18
<b>close</b>	<b>concluded</b>	<b>concluded</b>	19:16 42:4 132:7	
104:6 153:21 159:6	57:24	57:24	<b>counsel's</b>	13:16
<b>clumsy</b>	<b>conclusion</b>	<b>conclusion</b>	<b>counter</b>	32:17
111:15	22:13	22:13 33:12 64:16	<b>counties</b>	57:5
<b>Clymer</b>	<b>conclusions</b>	136:19 139:5,11 141:14,18 142:8	<b>country</b>	81:14 98:9
66:23	31:5	141:14,18 142:8	<b>county</b>	1:8 6:2 8:14
<b>CME</b>	<b>condition</b>	37:6 91:2 147:11	8:22 10:17,20 11:3,9 12:24 19:2	
62:7	82:22	86:10,21 97:18,19 106:18,19,20,24	21:18 48:6,13,18 49:5,8,11 54:12	
<b>co-dominant</b>	<b>conduct</b>	107:2,8 111:11,13	56:22 57:4,6 64:21 65:17 66:4	
101:13	108:13	87:9,24 91:1 136:8	67:13 68:24 69:5 69:9 72:11 73:10	
<b>coached</b>	<b>conduct</b>	147:6 148:1	73:12 77:12 89:23 97:3 160:2 162:3	
135:1 137:8	<b>conduction</b>	<b>conduct</b>	<b>couple</b>	24:15 156:12
<b>coaching</b>	103:3	103:3	<b>course</b>	15:19 37:21
132:20	<b>conference</b>	<b>conference</b>	53:19 63:6 65:21 66:19	
<b>comatose</b>	18:7	19:4	<b>court</b>	1:1 23:15 48:21
123:13	<b>conflict</b>	<b>conflict</b>	<b>CPR</b>	113:7
<b>combination</b>	52:3	52:3	<b>crashes</b>	128:19
130:4	<b>confuse</b>	28:12	<b>create</b>	33:9 45:15 88:14
<b>come</b>	117:16,22	117:16,22	<b>created</b>	23:7 53:20 90:4
6:24 16:2 18:11 37:5 61:18 70:1,2 84:14 101:9 111:5 128:7 156:1,4	<b>confusion</b>	33:10	<b>creates</b>	143:22
<b>comes</b>	<b>congested</b>	110:20	<b>creating</b>	90:3
9:20 101:10 101:11 149:18	110:22 111:3,4	<b>congestive</b>		
<b>comfortable</b>	<b>congestion</b>	110:20		
75:23	112:5 113:5,11	109:22		
<b>coming</b>	<b>connecting</b>	113:6		
18:14 31:5 87:9,24 91:1 136:8	139:18	113:6		
<b>commanded</b>				
42:8 44:11 46:4,7				
<b>commentary</b>				
94:9 96:18				
<b>Commission</b>				
160:18 162:22				
<b>commissioned</b>				
162:6				
<b>common</b>				
15:19 17:2 18:13 28:15 63:17 97:9,11 100:5 111:24 113:6				

144:23	93:3,4,6,8,11 95:3	140:6,21 141:15	detainee 28:9	113:3 114:2 115:2
<b>crime</b> 65:15	95:8,12,18,21	141:18 142:9	<b>detainees</b> 27:24	115:13,23 116:3,8
<b>criminal</b> 10:18	99:18,18 100:1	<b>delay</b> 134:11 140:14	74:11,14	116:15 117:3
<b>critical</b> 138:17	105:17,18 107:3	<b>delirium</b> 30:15,18	<b>detect</b> 152:8	120:5 122:5 125:8
157:5	107:14 109:2	30:21 31:7,11,23	<b>detectable</b> 151:21	125:12,20 126:5
<b>cross</b> 16:18 104:5	111:18,22,24	32:7,15,18,22	151:24 152:1,2,11	127:7,14 129:6
<b>CROSS-EXAMI...</b>	112:1,7,9,23	33:8,14,16 34:4	<b>detective</b> 66:24	132:5,10 133:2,8
5:4	113:9,17 117:7	34:14 35:4,7 36:5	93:15,17,19 94:5	133:13,15 134:4
<b>crystal</b> 12:6 115:15	120:12 123:18	36:10,16 37:24	94:8,22 95:17,23	134:13,18 135:2,8
<b>cuffed</b> 84:3	124:15,21 125:16	38:16	96:13,14	135:11,15,21
<b>current</b> 58:20 64:9	125:19,24 126:8	<b>demise</b> 93:13 95:3	<b>detectives</b> 66:7,19	136:9,18 137:10
105:12	126:14,21 127:4	<b>demonstrating</b>	<b>determine</b> 103:23	137:14,24 138:6
<b>currently</b> 58:17	127:16 128:5,10	88:17	<b>Di</b> 29:10,17 30:6,14	138:15,21 139:2
71:20,21	128:14 129:9,17	<b>denying</b> 154:2	30:17 33:20 37:20	139:19 140:12,16
<b>custody</b> 70:23 71:4	131:22 135:23	<b>department</b> 8:23	38:14 39:19	141:8,13 142:21
71:6 81:9	136:2,14 139:17	73:10 143:16	<b>diagnosed</b> 124:9	144:11 145:8,18
<b>cut</b> 133:20 134:1,3	141:17,21 143:1,4	<b>depends</b> 86:9	<b>diagnoses</b> 35:18,20	146:14 147:15
<b>cut-off</b> 105:7	143:23 144:1,3,4	<b>depose</b> 156:5	35:23	148:12 149:4
<b>CV</b> 54:17	145:15,21 146:5,5	<b>deposed</b> 5:15 9:19	<b>diagnosis</b> 30:21,23	150:1,10 151:7
<hr/>		51:3,9	31:3 34:5,14,22	153:3,6,15,22
<b>D</b>		<b>deposes</b> 5:3	35:4,8 75:17	154:11 155:1
<b>damage</b> 154:14	146:7,12,13	<b>deposition</b> 1:14 3:5	79:17,20 80:3	156:1,9,21 157:3
<b>damaged</b> 17:22	147:17,24 149:5,6	3:7 5:13,20 8:15	83:8,18,23 84:15	157:13,16,21
<b>damages</b> 154:20	149:11,14,21	9:13,22 11:17	98:9	158:1 159:15
156:18,19,20	150:12	13:19,23 15:6	<b>diagnostic</b> 35:13	<b>die</b> 31:10 79:6 80:6
<b>dangerous</b> 82:20	<b>deaths</b> 28:11 29:5	23:22 24:9 26:3	83:10	81:14 85:10 97:22
103:7,17	40:11 56:24 57:3	26:11 28:19 29:3	<b>diaphragm</b> 80:20	98:10,16 99:12
<b>Daniel</b> 39:11	57:23 58:8 70:19	36:22 38:12 39:17	<b>DiCello</b> 2:2 4:4 5:5	123:15 129:7
<b>date</b> 26:13 161:23	70:23 71:6,7	41:2,3,6,19 42:22	5:11 7:7,15 8:3,16	142:6
<b>Davis</b> 65:12	113:7 128:17	43:12 44:17 55:14	9:3,7,18 10:4,14	<b>died</b> 31:22 32:6
<b>day</b> 20:19 24:13	<b>deceased</b> 1:5 11:6	56:1 57:8 68:5	10:23 11:15,20	33:13 36:16 56:22
94:16 114:1,7	20:10 21:20 69:19	122:8 148:24	12:10,16 13:1,15	91:5 92:15 93:10
152:1 155:6	<b>decedent</b> 16:2 20:12	153:10,17,18,19	13:24 14:10,12,23	98:9 99:2 107:22
160:15 161:3	67:10,17 117:6	153:20 154:3,23	15:4 18:24 19:15	113:20 114:1,5,7
162:18	<b>decedent's</b> 16:24	155:13,14 156:23	19:21 20:7,21	114:15,19 115:6
<b>days</b> 91:5 119:4	19:6 74:20 95:12	157:1,4,7,18	21:12 22:3,17	116:22 124:6,10
149:7 159:8	117:11	158:7 160:4,11,14	28:23 29:24 30:13	124:20 143:7
<b>daytime</b> 70:11	<b>December</b> 1:16 3:1	161:2	31:19 32:13 35:14	144:19 150:5
<b>Dayton</b> 1:16 2:9	159:1 160:5	<b>depositions</b> 153:21	36:9,20 38:5,11	151:2 152:9
49:16 72:16,21,21	162:18	154:1,15	40:20,22 41:14,22	<b>dies</b> 84:2
<b>dead</b> 98:2 151:15	<b>decide</b> 107:11	<b>depression</b> 112:4	42:15,24 43:7,10	<b>difference</b> 76:6 85:3
<b>deadline</b> 155:15	<b>decides</b> 108:15	<b>depriving</b> 154:19	43:19,23 44:14	97:18 102:10
157:17	<b>deemed</b> 13:18	<b>deputy</b> 48:8 49:7	45:4,7,14,18,23	<b>different</b> 37:12 61:5
<b>dealing</b> 70:7 105:10	<b>defendant</b> 11:10	<b>descending</b> 100:18	46:5,7,13,14,19	79:19 98:19 110:6
<b>Dear</b> 159:2	53:22	101:8,23 102:3,5	47:2 48:24 50:4	<b>differentiate</b> 76:2
<b>death</b> 5:20 6:13,23	<b>defendants</b> 1:9 2:10	102:17,21,22	52:5,12 54:9	<b>difficult</b> 46:2 153:9
7:20 9:15,20	2:14 50:11	104:24	55:11,22 56:6	<b>diffuse</b> 113:11
20:14 21:17 24:13	<b>defense</b> 19:11 21:11	<b>describe</b> 101:3	57:17 62:19 63:11	152:9
25:10 26:14 31:6	21:14 29:19 30:3	<b>described</b> 18:9	64:20 65:7,13	<b>digital</b> 16:6
32:18 33:9 34:4	154:21	24:20 25:19 49:8	66:21 67:21 68:2	<b>dilated</b> 16:24
36:12 38:19 51:13	<b>define</b> 81:6,16,19	<b>describing</b> 68:14	72:5,17 76:9 77:6	<b>Dinkler</b> 1:16 2:7,7
51:14,15 54:24	140:23 141:4	<b>desirable</b> 60:13,17	78:10,11,16 85:11	7:2,12,21,24 8:9
68:6 69:14,23	<b>definition</b> 121:8	<b>desire</b> 159:4	87:23 89:3 90:10	8:11,21 9:1,6,16
71:4,11 72:19	141:7 142:6,10	<b>desired</b> 159:5	91:16 92:2,6	9:23 10:9,17 11:7
74:21 75:6,10,24	148:3	<b>destroyed</b> 25:16	95:16 96:4,11,22	11:14,20 12:4,13
76:14 79:6,18,21	<b>degree</b> 31:6,21 32:5	27:12	98:5,14,19,20	12:15,18,22 13:13
81:2,5,9 83:23	33:13 109:13	<b>detail</b> 27:6 71:15	99:19 100:4,8,13	13:20 14:17 18:22
84:2,11,22 85:5	114:4,10,13 115:5	126:24	102:14 103:6,13	19:9,19 20:2,15
85:24 86:16,22	115:18 116:20	<b>detailing</b> 16:2	103:22 107:18	21:8,22 22:12
87:2,3 88:2,3	117:14 118:3,6	<b>details</b> 70:5 123:19	108:2,11,21 109:9	28:20 29:21 30:7
89:10 90:11 92:21	119:20 129:13,15	<b>detained</b> 81:13	111:2 112:18	31:16 32:8 35:9

36:7,17 38:4,8 40:19 41:4,12,16 41:17,23 42:5,18 43:6,9,17,21 44:4 45:9,17,20 46:1,6 46:11,23 48:21 50:1 52:4,8 54:6 55:20 56:3 57:16 62:16 63:8,10 64:15 65:5,10 66:17 67:19 68:1 72:2,13 76:5 78:8 78:14 85:6 87:20 89:1 90:6 91:13 91:24 92:4 95:13 96:2,8,16 98:1,12 98:17 99:15 100:3 100:11 102:12 103:1,9,19 104:10 107:15 108:1,8,18 108:20 109:6 111:1 112:15 113:1,22 114:17 115:9,11,19 116:1 116:5,13,24 120:3 122:2 125:10,18 126:1 127:5,11 129:2 131:24 132:2,9,22 133:3 133:9,14 134:1,8 134:16,20 135:7,9 135:18 136:4,15 137:7,12,20 138:3 138:8,11,20,23 139:15 140:8 141:5,12 142:18 142:20 144:2 145:6,13 146:1 147:13 148:6,20 149:23 150:8 151:3 153:18,23 154:13,18 155:18 156:3,17,24 157:8 157:15,19,23	106:15,23 107:7 140:3 146:13 149:13 150:12 <b>distal</b> 102:5,8,20,23 103:18 <b>distributed</b> 70:24 <b>distribution</b> 100:24 <b>DISTRICT</b> 1:1,1 <b>DIVISION</b> 1:2 <b>DNA</b> 78:23 <b>doctor</b> 5:9 6:6 10:16 11:2 14:13 22:18 23:22 24:8,19 29:7 30:20 31:14 37:13 40:23 44:15 46:3,8 47:3,9 55:8 56:16 58:14 61:14 62:10 68:9,9 69:12 77:4,9,22 78:19 79:5 81:8 92:7 93:4 94:15 97:9 100:14 102:11 107:10 109:17 111:16 113:18 115:24 116:16 119:11 120:9 121:15 125:3,13 127:8 128:9 138:17 140:17 142:17 143:13 144:17 150:17 153:9 156:21 158:1	<b>door</b> 76:22 <b>dope</b> 136:24 <b>doubt</b> 107:21 125:6 <b>Douglas</b> 5:10 <b>dozens</b> 57:1,2,3,23 58:7 70:18 <b>Dr</b> 5:11 6:22 10:18 12:6 19:3,3 29:17 30:6,14,17 64:24 65:3 96:6 121:16 148:21 155:14 159:2 <b>Drive</b> 1:21 159:9 <b>drownings</b> 128:19 <b>drug</b> 85:4 117:24 119:2 121:3,10 124:18 131:8,11 139:16 142:22 143:5,6 144:1,3,7 144:12,21,22 146:17 150:15 151:2 152:19,21 <b>drugs</b> 124:20 126:10,14 <b>drunk</b> 82:8 117:17 <b>DSM</b> 35:15 36:2 <b>Dublin</b> 1:22 159:9 162:17 <b>due</b> 82:2 111:11 112:9 138:4 143:7 146:24 150:15 <b>duly</b> 5:2 162:6,7 <b>Dwight</b> 49:21,22 52:6 <b>dying</b> 82:24 86:8 87:6,10 96:6 97:18,19 98:23,24 128:18	<b>E</b> <b>earlier</b> 45:2 <b>early</b> 157:6 <b>easiest</b> 144:7 <b>easy</b> 33:7 56:23 <b>edema</b> 109:19,21 110:21,23 111:8 112:3,4 <b>editorials</b> 39:23 <b>effect</b> 137:18 139:13 152:21 153:1 <b>effectively</b> 81:23 <b>effects</b> 121:3 124:14 <b>efficiently</b> 100:15 <b>effort</b> 64:11 <b>efforts</b> 61:10 62:7 <b>either</b> 9:10 18:11 24:19 29:6 61:22 69:23 80:16 82:3 146:6 152:4 <b>EKG</b> 136:24 <b>elected</b> 64:17,18,22	65:11 <b>Ellis</b> 2:16 <b>emergency</b> 25:3 <b>employed</b> 48:13 72:11,20 89:24 <b>employee</b> 8:22 10:17 64:19 70:2 73:13 <b>employer</b> 11:9 12:24 13:8 <b>employment</b> 49:6 49:10 54:11 61:22 <b>encounter</b> 113:19 114:14 <b>encountered</b> 11:3 20:11 66:18 67:23 <b>encountering</b> 115:7 <b>encouraged</b> 134:23 <b>enforcement</b> 81:14 83:1 <b>engine</b> 40:5 <b>enlarged</b> 98:4 99:7 105:19,20,23 <b>entered</b> 132:15 161:5 <b>entire</b> 94:3 161:2 <b>entitled</b> 30:15 <b>ER</b> 24:15,15 <b>errata</b> 159:4,9 <b>ESQUIRE</b> 2:2,6,7 2:11,12 <b>estate</b> 1:5 5:24 <b>estimate</b> 104:6 127:23 <b>Estimating</b> 104:12 <b>et</b> 1:9 <b>etiologies</b> 79:19 <b>etiology</b> 99:5 113:16 <b>evaluate</b> 30:5 104:9 <b>evaluated</b> 88:9 <b>evaluating</b> 104:3 <b>evaluation</b> 17:24 52:19 <b>evenly</b> 70:24 <b>event</b> 26:13 79:10 79:14 108:6 114:20 130:1,2,15 <b>everybody</b> 108:7 155:15 <b>everyday</b> 122:11 129:4 <b>everyone's</b> 156:22 <b>evidence</b> 7:3 30:8 68:1 92:20 95:7 95:20,21 127:22 128:2 129:19,20 130:22,24 131:3,6 131:10,19 135:22 136:13 139:10 150:16 <b>exact</b> 33:5,20 38:9
--	---	--	---	--

162:22	fees 52:20	46:15,17 47:4,7	73:12	go 7:4,13,24 8:12
<b>explain</b> 36:4	<b>Felicia</b> 2:15	55:13	<b>forward</b> 158:2	12:9 20:13 21:24
<b>explained</b> 19:6 85:2	<b>fellow</b> 6:21	<b>folks</b> 39:20 56:22	<b>Foster</b> 2:15	28:21 30:9 32:10
<b>explaining</b> 139:5	<b>fellowship</b> 47:14,23	65:23 66:9,15,22	<b>found</b> 58:7,9 95:9	35:10 36:18 40:24
146:5	48:1,5,14 49:4	71:24 89:22	98:24 101:17	41:20 42:16 45:20
<b>explanation</b> 115:21	<b>field</b> 35:23 61:2,3	<b>follow</b> 10:15 13:16	106:16 109:22	45:22 48:3 54:7
<b>explore</b> 154:19	61:24 63:23 64:8	13:21 21:3 28:3	111:16 118:9	57:12 60:22 62:6
<b>extent</b> 104:9	64:10	<b>following</b> 59:12	120:7 124:20	69:12,13 70:3
<b>external</b> 80:18	<b>fifth</b> 116:24	80:7 84:8 155:6	<b>foundation</b> 11:21	72:14 73:22 77:11
<b>extremely</b> 113:6	<b>figure</b> 57:13	161:4	32:9 52:9 62:17	77:21 82:14 85:8
<b>eyewitness</b> 28:9	<b>figured</b> 98:7	<b>follows</b> 5:3	103:20 133:5,18	87:8,21 90:7
74:10	<b>file</b> 9:11,21 10:1,2,5	<b>foot</b> 46:3 106:5	<b>four</b> 77:7 115:20	91:14 95:14 98:21
<hr/>				
<b>F</b>				
<b>F</b> 143:2	10:8 13:11,12,18	<b>footage</b> 95:11,18	143:13,14 151:1	104:3 108:20
<b>faced</b> 76:4	15:17,19,21 25:1	<b>force</b> 80:18	<b>fourth</b> 116:1	109:7 113:23
<b>faces</b> 67:5	26:6 37:2 41:1,3	<b>foregoing</b> 160:4,10	<b>Franklin</b> 162:3	114:18 115:24
<b>fact</b> 78:22 152:19	41:10,15 42:8,8	162:11,13	<b>frequently</b> 29:19	116:4 121:19
<b>factor</b> 80:7 85:4,12	42:14 43:2,11	<b>forensic</b> 30:3 35:22	<b>friends</b> 66:9	125:2 132:3
85:16,20,22 129:9	44:16 45:24 46:3	36:2 38:14,15,16	<b>front</b> 13:23 23:14	145:14 147:21
141:21 143:6	46:5,8,9,11,18,21	39:7 47:12,21	23:15 77:3 143:11	151:4 153:3
146:6,7	46:24 78:7,20	48:1,3,17 49:5,7	<b>full</b> 106:2 156:15	156:21
<b>factors</b> 80:1,5 85:1	143:12	49:11 54:11,16	<b>full-time</b> 48:12	<b>goal</b> 33:22
88:13	<b>filed</b> 6:1 21:17 97:6	56:18 58:17 60:19	<b>goes</b> 46:8 81:3	<b>goes</b> 46:8 81:3
<b>facts</b> 7:2 30:7 68:1	<b>files</b> 16:7,9 27:15	60:21 61:16 64:1	113:16 152:7	113:16 152:7
84:1,10 139:20	<b>final</b> 79:8	64:8 84:5 94:20	<b>going</b> 9:21 10:10,15	13:16,17,21 14:24
<b>fail</b> 60:7 139:22	<b>find</b> 34:17,19 42:16	127:16 141:3	16:10 20:12 23:8	26:18 27:1,3 42:1
<b>failing</b> 137:5	78:18 96:10 128:2	152:15	<b>Garrett</b> 2:16	42:10 57:18 70:12
<b>Failure</b> 159:9	134:22	<b>forever</b> 104:22	<b>gasp</b> 89:4	72:23 77:2,3,15
<b>fair</b> 23:9 95:23	<b>finding</b> 125:2,13	<b>form</b> 7:2,12,21 8:11	<b>Gasping</b> 87:5	78:18 82:10,12
103:16 126:16	128:13 140:5	8:21 9:6,16,23	<b>gather</b> 71:16 72:12	98:6 100:14
133:3 135:3 140:9	<b>findings</b> 109:16	10:9 11:7,21	<b>gathered</b> 72:24	110:14 119:10
<b>fairly</b> 96:20	111:17,21,23	13:13,20 14:17	<b>gathering</b> 71:23	122:3 124:2 125:8
<b>fall</b> 32:21 146:18,19	112:9,22	19:9,19 20:2,15	73:15	133:12 138:3
146:20 147:22	<b>finds</b> 93:9	21:8,22 22:12	<b>geared</b> 62:5	146:18 148:8
<b>familiar</b> 29:22	<b>fine</b> 12:1 134:16,21	29:21 30:7 32:8	<b>general</b> 58:19 60:18	153:20 154:1,23
35:15 63:19,23	138:13	35:9 36:17 41:12	63:16 146:11	155:24 156:3,7
89:16	<b>fingerprint</b> 15:21	42:5,18 52:8	<b>generally</b> 7:5 15:21	<b>good</b> 5:6,7 20:22
<b>families</b> 33:10	<b>finish</b> 22:23,24	55:20 56:3 57:16	18:14 19:10 34:9	95:7 96:20
<b>family</b> 5:24 19:12	150:23 153:10	62:16 64:15 65:5	63:15 66:3 70:9	<b>Google</b> 40:7 63:1
19:16 20:10 21:20	154:3 157:1,10	65:10 66:17 67:19	70:20 105:15	<b>government</b> 63:20
67:10 74:16,19	<b>finished</b> 31:17	72:2,13 76:5 78:3	117:9	<b>grammatical</b> 145:3
<b>Fannin</b> 15:13 26:22	<b>Fire</b> 72:22	85:6 87:20 91:13	<b>generate</b> 25:11	<b>grams</b> 105:22
73:3,5,15,19 74:1	<b>fireman</b> 72:16	91:24 92:4 95:13	<b>generated</b> 14:22	110:15,16
74:5,13,19	<b>firm</b> 1:16 8:23	96:2,8,16 98:1	24:10 36:11	<b>grandparents</b> 74:21
<b>far</b> 1:16 2:8 13:4,21	<b>first</b> 5:2 11:3 15:5	99:15 100:11	<b>generating</b> 24:22	74:23 156:13
20:5 24:22 88:8	15:13 23:19 59:1	102:12 103:19	33:22	<b>great</b> 134:19
119:7 146:24	66:8 67:3 69:22	104:10 107:15	<b>getting</b> 43:8 44:10	<b>greater</b> 127:20,21
<b>faster</b> 24:5 26:18	72:15 92:11 93:6	108:1,18 109:6	83:20 135:19	<b>gross</b> 104:13 111:17
<b>fat</b> 152:5,7	93:8 126:6	111:1 113:1,22	138:16 156:19	<b>grossly</b> 105:5
<b>fatal</b> 79:6,11,15,22	<b>Fisher</b> 38:19,21	120:3 122:2	<b>give</b> 61:20 93:19	<b>ground</b> 84:4
100:6 107:22	<b>fit</b> 116:16	125:18 126:1	95:20,24 99:23	<b>grounds</b> 133:4
108:16 109:14	<b>five</b> 75:18,22 76:13	127:11 129:2	117:1	<b>group</b> 56:24 62:6
<b>fate</b> 134:2	119:4 145:17	131:24 133:17	<b>given</b> 12:5 23:7 44:9	<b>groups</b> 35:23
<b>fatigue</b> 85:22 86:3	149:7	139:15 144:2,15	67:18 70:14 92:11	<b>guess</b> 37:8 43:8,8
<b>favor</b> 88:15	<b>fixable</b> 103:15	144:18 145:2,3,6	96:18 115:21	50:8 111:15
<b>feature</b> 83:11 99:7	<b>flow</b> 102:17	145:13 146:1	151:19 152:19	121:18 124:1
<b>federal</b> 63:20	<b>fluid</b> 110:19	147:13 148:6	157:4 160:4	126:3
<b>feel</b> 33:18,19 61:6	<b>foam</b> 87:9,24	150:8 151:3,5	162:12	<b>guidance</b> 14:3,6
71:19	<b>focus</b> 90:2 106:18	160:6	<b>giving</b> 14:2 121:2	<b>guidelines</b> 63:18,22
<b>feelings</b> 53:20	<b>focusing</b> 138:12	<b>formally</b> 10:2	159:5	64:2
	<b>folder</b> 42:9,10 44:8	<b>format</b> 16:6 27:1,4	<b>glad</b> 137:23	
	44:8,9 46:10,11	<b>former</b> 65:11 73:6,7	<b>glib</b> 114:9	

gunshot 128:19	107:1,2 108:7	humans 123:7	58:5,11 104:19	inmate 69:24
gurgling 87:5	109:5 111:11	hundred 75:13,14	136:2	instruct 7:19 10:10
guy 137:5	120:24 122:13	hundreds 123:14	incompatible 106:20	42:16
guys 83:3 87:22	137:5,19 139:13	Hutch 67:2,2,4	inconsistent 111:22	instructed 21:4 42:3
<b>H</b>	139:21 140:3,7,11	Hutch's 67:3	increase 85:10	42:6
<b>H-O-L-L-A-R-A-N</b>	142:13 147:5	Hutchinson 67:2	increased 85:5,23	instructing 10:21
29:14	150:6	hydroxy 119:10,11	increases 85:13,17	instructions 11:24
<b>habit</b> 25:24 69:13	heavier 106:9	119:15	increasingly 100:5	instructs 10:24
69:18	heavy 110:18	hypertensive 93:10	intention 153:10	intentional 148:1,4
<b>habitus</b> 119:9	height 105:22	99:4,9,13,14,17	148:10,10 155:10	intentionally 155:17
<b>hairs</b> 151:5	held 48:16 91:9,22	99:24 149:12	<b>interaction</b> 107:10	interaction 107:10
<b>half</b> 33:4 44:2 49:17	153:5	hypertrophy 85:16	107:12 108:14	116:21
50:24 51:1 53:4	help 69:13 129:12	97:10,14,22,23	<b>interest</b> 22:14	118:21 132:17
<b>hallucinations</b>	helping 131:5	98:10,11,23 99:3	<b>interested</b> 30:2 91:1	interesting 132:6
121:2	helps 22:20	99:7	134:22	internal 16:14
<b>hand</b> 14:24 77:2	hereinafter 5:2	<b>I</b>	internet 37:17 40:2	internet 37:17 40:2
135:6,12,13	hereto 160:6	ice 12:5	56:8	interpret 144:18
162:16	heroin 129:4	<b>idea</b> 35:5 52:1 57:21	interprets 144:9	interrupt 146:2
<b>handbook</b> 35:24	hey 32:21 51:19	72:20 81:22 82:19	intervals 104:6	interview 74:3,10
38:14 63:20	78:2 96:5 135:3,5	96:10 103:3	74:13	interviewing 74:8
<b>handbooks</b> 63:18	high 61:6 97:13	125:14 140:24	<b>intoxicated</b> 117:15	intoxication 117:4,5
63:22	124:5 127:13,16	155:2,23 156:18	117:17,18,22	118:18,23 119:1
<b>handcuffs</b> 82:4	127:17	<b>identification</b> 14:11	146:17	intoxications 124:18
<b>handful</b> 126:9	<b>higher</b> 80:12 86:7	15:3 55:9 77:5	<b>introduction</b> 5:18	introduction 5:18
<b>handing</b> 14:13 77:7	87:1	<b>identified</b> 41:6	investigated 57:24	investigation 38:20
<b>hands</b> 58:1 83:1	<b>highly</b> 125:16,22	42:11 72:21 127:3	investigations 48:11	investigative 15:12
84:3 148:2,10	129:14	128:7	15:15 83:17	15:15 83:17
<b>happen</b> 69:22 100:7	<b>Hills</b> 1:16 2:8	<b>identify</b> 14:16	<b>investigator</b> 26:21	70:4 71:17 72:24
100:9	hired 65:3,8	122:18 131:9	73:2,11	73:2,11
<b>happened</b> 28:1	<b>historical</b> 129:20	<b>identifying</b> 93:4	<b>investigators</b> 15:14	investigators 15:14
74:11 83:6 91:12	<b>history</b> 49:10 57:12	ignored 84:23	invite 67:13	invite 67:13
92:3 135:18	57:19 70:7 71:14	<b>imagine</b> 25:8	invited 6:24 19:3	invited 6:24 19:3
151:14	hit 148:7	<b>immediate</b> 146:6	inviting 18:11	inviting 18:11
<b>happening</b> 94:11	<b>hog-tie</b> 40:12	152:5	<b>involve</b> 51:12	involve 51:12
96:19	<b>HOJNOSKI</b> 2:12	<b>impact</b> 120:22	<b>involved</b> 7:6 56:22	involved 7:6 56:22
<b>happens</b> 69:18,21	<b>hold</b> 31:16 61:6	impaired 81:23	108:24 155:5	involving 21:16
70:11 81:11 83:8	78:18	<b>impairment</b> 82:2	152:10,13	issue 50:16 51:12
<b>happy</b> 133:15	<b>Hollaran</b> 29:12,13	117:20,23	54:3,23 55:3	54:3,23 55:3
155:22	39:21	<b>ingest</b> 119:22 121:5	140:19 153:14	140:19 153:14
<b>hard</b> 22:22 53:20	<b>home</b> 148:8	123:9 145:4	<b>issued</b> 21:7 56:1	145:1 150:15,19
56:4,4	<b>homicide</b> 145:16	<b>ingested</b> 123:12	90:12 93:3,8,11	150:21 151:1
<b>Harry</b> 1:4	146:20 147:20,23	136:21 137:5,17	<b>issues</b> 51:12,20	
<b>Harshbarger</b> 65:1,3	148:8,11	151:11		
<b>head</b> 82:5	<b>homicides</b> 57:24	<b>ingesting</b> 124:10,14		
<b>health</b> 91:3,17	148:17	124:22 129:16		
143:16	<b>honest</b> 155:1	<b>ingestion</b> 123:7		
<b>healthcare</b> 24:11	<b>hooked</b> 136:23	124:7 125:14,23		
50:13	<b>hoop</b> 61:6	126:8 127:22		
<b>healthy</b> 121:10	<b>hope</b> 71:7	128:2		
<b>heard</b> 62:10 82:14	<b>hopefully</b> 47:4	<b> ingestions</b> 122:20		
97:17	<b>hospital</b> 45:15	<b>inhibited</b> 86:14		
<b>hearing</b> 132:19	69:24 70:1	<b>initial</b> 130:15		
<b>heart</b> 16:18 33:23	<b>hosted</b> 74:9	<b> injected</b> 151:20		
79:7,22 85:12	<b>hot</b> 135:19	<b>injection</b> 91:6,7,9		
98:4 99:8 100:6	<b>hours</b> 151:9,11,12	91:22 96:19 152:4		
100:17,24 101:10	151:14	152:10,13		
101:15 105:9,15	<b>HSA</b> 91:15	<b>injured</b> 144:21		
105:19,19,20	<b>HSA's</b> 91:11	<b>injury</b> 143:2,4		
106:1,2,10,12,15	<b>huh-uhs</b> 22:22	144:4,6,12,14,22		
106:19,20,23	<b>human</b> 120:10	145:1 150:15,19		
	122:19,23	<b>including</b> 47:23		

153:8 <b>issuing</b> 25:6 27:8 28:17 36:23 38:6 55:19 90:20 94:14 <b>item</b> 24:10 <b>items</b> 15:22 25:15 <b>IV</b> 35:15 36:2	<b>knew</b> 9:14 <b>Knight</b> 39:7 <b>knocking</b> 76:22 <b>know</b> 8:1 9:8 11:16 12:23 13:4 14:2 16:9 20:3,16 21:1 21:4 22:6,15,16 22:19 23:17,18 25:22 27:18 31:4 31:12,20 33:3 34:16,21 38:23 41:17 45:5 50:2,3 50:8,12,13,15 51:11 52:10 53:7 54:17 57:15 61:4 65:17 66:5 67:2,3 67:24 68:12 71:14 74:8,8 75:21 77:17 78:17 82:16 89:18,21 91:11 93:1,2,2,17 94:16 94:21 95:15 96:19 96:20,21 97:12,15 98:22 105:12 107:24 108:4 110:5 114:10,19 114:23 115:3 116:7,12,13,19 117:2,14,19 118:13,14 119:5 119:16 120:1,4 121:24 122:3,10 123:24 124:8,23 125:1,15 127:8,12 130:3,5,8 132:6 132:14,16 135:13 136:21 137:17,18 140:10 141:9 145:9,10 146:16 146:23 147:18 149:2,18 150:5 151:11 152:15 153:12 154:8,13 156:2,12 157:22 <b>knowing</b> 30:12 69:15 111:14 114:6 <b>knowledge</b> 8:2 22:1 24:18 35:3 37:7 76:21 78:1 93:24 97:16 <b>known</b> 71:21 136:16 140:2 <b>Krisandra</b> 2:15	<b>LAD</b> 103:18 106:16 <b>Lakeside</b> 2:3 <b>land</b> 149:2 <b>Lane</b> 68:16 <b>Lane's</b> 68:17 <b>language</b> 116:17 <b>large</b> 16:18 <b>larger</b> 106:10 <b>law</b> 1:16 23:15 49:24 81:14 83:1 <b>lawsuit</b> 6:1 13:5 97:6 <b>lawyer</b> 8:10 11:4 12:12,21 13:3,7 134:14 <b>lawyers</b> 114:9 154:21 <b>lay</b> 42:11 149:2 <b>laying</b> 80:17 <b>layman's</b> 86:3 <b>Layne</b> 1:15,21 3:6 159:9,13 162:5,20 <b>lead</b> 56:18 73:11 86:16 <b>lead-in</b> 138:24 <b>leading</b> 107:3 <b>leads</b> 139:11 <b>learn</b> 64:11 <b>learned</b> 154:18 <b>leave</b> 93:22 95:17 154:24 157:24,24 <b>leaving</b> 132:23 <b>lectures</b> 54:15 <b>left</b> 16:24 97:9,13 97:22,23 98:3,9 98:10,23 99:2,6 100:18 101:6,12 101:22 102:3,5,16 102:21,22 104:23 110:5,13,14,16 <b>legal</b> 10:15 22:13 64:16 <b>legitimate</b> 30:21 34:22 35:4,7,23 82:21 83:7 <b>lengthy</b> 11:22 <b>lesion</b> 102:4,15,20 102:23 103:4,17 103:24 105:1,4 106:11,16 <b>let's</b> 49:14 90:2 106:18 121:19 143:9 155:3 <b>lethal</b> 103:4 120:16 120:19 121:21 122:18,20 123:6 128:23 <b>letter</b> 60:7,8 <b>letting</b> 21:3 <b>level</b> 61:2 97:13 117:19 120:6,10	<b>122:18 123:13</b> <b>152:3,11</b> <b>levels</b> 61:5 123:20 <b>LIBER</b> 2:3 <b>library</b> 37:16 <b>license</b> 47:13,14 <b>licensed</b> 47:11,16 <b>life</b> 106:21 <b>life-threatening</b> 123:21 <b>likelihood</b> 85:10 <b>Likewise</b> 155:21 <b>limit</b> 50:8 106:9 <b>limiting</b> 37:23 <b>line</b> 69:18 132:21 143:1,3 159:5 161:7 <b>list</b> 58:16 <b>listed</b> 39:21 149:12 <b>listen</b> 116:11 134:16 135:16 <b>literature</b> 29:4 36:21,23 37:3,5,8 37:10,12,14 39:24 40:24 41:9 42:3 42:17,23 43:14,15 43:24 44:5,10,23 55:12,17,24 61:15 64:9 78:6 83:2 103:17 106:2 120:9 122:17,22 123:18,22 <b>litigation</b> 8:24 11:9 77:12 <b>little</b> 47:9 100:14 107:16 120:1 <b>live</b> 114:9 <b>local</b> 49:16,18 54:16 <b>located</b> 57:10 <b>location</b> 103:24 <b>log</b> 15:22 <b>logged</b> 15:23 <b>logic</b> 33:5 147:4 <b>logical</b> 33:6 <b>long</b> 18:4 30:17 47:21 50:22 66:23 93:2 94:1 119:7 153:11,12 <b>long-worded</b> 84:7 <b>longer</b> 15:13 25:7 53:13 58:20 68:18 <b>look</b> 18:5,12,18 38:3 42:3,23 55:14 56:1 57:12 119:17 135:8 152:16 158:2 <b>looked</b> 16:18 55:24 57:13 69:3 149:22 <b>looking</b> 55:16 126:22 143:10 <b>looks</b> 56:8 90:21	<b>lorazepam</b> 151:17 152:3,24 <b>lot</b> 9:19 25:10 33:9 33:10 34:18,19 37:12 97:21 98:8 99:12,16 148:17 152:16 <b>lots</b> 82:8 113:8 <b>LPA</b> 2:12 <b>lumen</b> 104:7 <b>lung</b> 110:4,6,7,11 110:12 111:23 112:9 <b>lungs</b> 109:23 110:1 110:15 111:6,10 111:21 112:22 <b>LVH</b> 98:15 99:1 <b>Lynette</b> 125:5 133:23 134:7 <b>Lynnette</b> 2:7 135:5 155:5
<b>K</b>				<b>M</b>
<b>keep</b> 35:2 71:5 87:12,14 95:11 <b>Ken</b> 65:15 <b>kept</b> 95:21 <b>kid</b> 134:17 135:10 <b>kill</b> 121:4 148:8 <b>killed</b> 79:14 128:23 <b>killing</b> 120:14 124:3 <b>kind</b> 8:1 18:17 20:10 27:3,6 35:24 37:11 40:24 42:2 49:24 50:5 52:2,18 53:13 54:10 65:24 66:16 69:13,17 70:7,22 82:10 87:3 88:8 106:8 116:19 126:24 129:24 152:16		<b>M.D</b> 1:14 2:16 3:5 4:2 5:1 160:3,9,11 162:7 <b>machine</b> 136:24 <b>mail</b> 20:19 62:3,3 <b>mailing</b> 14:21 <b>main</b> 38:15 63:4 101:10 131:13 <b>maintain</b> 27:9 104:8 <b>Maio</b> 29:10,17 30:6 30:14 33:20 37:20 39:19 <b>Maio's</b> 30:17 38:14 <b>majority</b> 100:23 127:19 <b>making</b> 44:23 121:2 133:4 147:11 154:11,14 157:6 <b>malpractice</b> 50:7 <b>man</b> 96:6 106:6 109:19 110:7,7 137:17 138:24 <b>man's</b> 92:20 <b>manilla</b> 46:10,15,17 47:4,7 55:13 <b>manner</b> 99:3 143:1 145:15 146:5,8,24 149:6 <b>marijuana</b> 117:4,5 117:7,10 118:4,7 118:20 119:4,21 120:2,6,11 121:5 121:9,10,16 122:1 122:9,15,18,21 123:6,9,18,21,23 <b>looking</b> 55:16 126:22 143:10 <b>looks</b> 56:8 90:21		

128:2,9,13,16,21	114:13,20 115:5	<b>misleading</b> 21:23	25:2 45:5 89:17	<b>note</b> 15:15
129:8,16 130:3,8	115:18 116:20	126:2 132:2,8	89:24 90:12,13,20	<b>notes</b> 3:7 45:21
130:12,23 131:4,6	117:15 118:3,6	133:6,6,7,21,23	90:22,22 91:3,21	<b>notified</b> 74:20
131:11,21 135:17	119:21 120:9	134:5,14 135:6	<b>narrative</b> 27:23	155:15
135:22 136:2,10	129:15 130:12	<b>missing</b> 45:19	<b>narrowing</b> 105:16	<b>notify</b> 155:19
136:13,16 137:4	136:12,20 137:4	<b>missstates</b> 142:20	<b>National</b> 58:18	<b>noting</b> 160:6
137:16 139:3,14	137:16 139:6,12	<b>misunderstanding</b>	63:24	<b>number</b> 5:15 11:2
139:21 140:2,4,19	140:7,21 141:15	112:13	75:2,16 77:7	
140:22 141:16,20	141:19 142:9,23	<b>misunderstandings</b>	79:17,20 120:16	
142:10,12 143:7	143:17	33:10	127:6 128:12	
144:6,8 145:5,23	<b>medical-legal</b> 50:7	<b>moment</b> 16:11 43:4	143:12 155:20	
147:1 149:18	<b>medical/legal</b> 49:15	<b>Monday</b> 3:1	159:5,5	
151:11	50:20 52:19 54:5	<b>Montgomery</b> 6:1	<b>numerous</b> 57:5	
<b>mark</b> 14:10 159:3	54:13	12:24 19:2 21:17	58:19	
<b>marked</b> 4:7 14:11	<b>medicine</b> 47:16	48:6,13,18 49:5	<b>Nurse</b> 2:15,15,15	
14:13 15:1,3 55:9	54:16	49:11 54:12 56:22		
77:5,8 90:12,22	<b>Medicolegal</b> 38:19	57:4 64:21 65:17	<b>O</b>	
<b>materials</b> 13:10	<b>MEDLINE</b> 40:7,8	66:4 67:13 68:24	<b>o'clock</b> 154:8,10	
14:6,8 43:2 47:4,6	62:22,23	69:5,9 72:11	<b>oath</b> 23:11,13	
77:14	<b>meet</b> 5:12 7:5 20:8	73:10,12 77:12	<b>obese</b> 80:10	
<b>MC</b> 77:10,11	<b>meeting</b> 70:10	89:23 97:3	<b>obesity</b> 80:7,10	
143:15	158:2	<b>month</b> 92:14,17,23	<b>object</b> 134:5	
<b>McGinnis</b> 72:20	<b>meetings</b> 54:16 63:6	<b>months</b> 107:2	<b>objecting</b> 133:17	
<b>mean</b> 22:5 28:16	63:9,10	<b>morgue</b> 48:10 68:19	<b>objection</b> 7:2,12,21	
40:4 66:11 67:20	<b>member</b> 6:23 9:20	<b>morning</b> 70:10	8:11,21 9:6,16,23	
75:12,13 76:16	21:20 58:13 67:10	<b>mothers</b> 156:4	10:9 11:7,21	
81:18,19 83:3	68:24	<b>motor</b> 128:19	12:22 13:13,20	
84:19 90:16 106:7	<b>members</b> 19:8,12	148:17	14:17 19:9,19	
106:9 107:17,20	19:16 20:9,10	<b>mouth</b> 87:9 88:1	20:2,15 21:8,22	
108:3 117:18	67:13 74:16,19	133:1	22:12 28:20 29:21	
119:3 120:18	81:13	<b>move</b> 43:6 49:2	30:7 32:8 35:9	
128:7 142:16	<b>membership</b> 61:18	66:19 122:16	36:17 41:12 42:5	
143:7 154:14	<b>memory</b> 68:6	138:20 139:7	<b>never</b> 6:6,9 20:16	
<b>meaning</b> 25:16	<b>mentioned</b> 37:19	<b>mucus</b> 87:9,24	42:18 50:1 52:4,8	
100:23	<b>met</b> 6:6,21 9:1	<b>multiple</b> 25:14	55:20 56:3 57:16	
<b>means</b> 48:10 117:23	135:14	26:15 37:21 40:4	62:16 64:15 65:5	
128:24 135:13	<b>metabolite</b> 117:10	74:7 124:18,19	65:10 66:17 67:19	
142:6 143:8 146:8	118:16 119:12	132:24	72:2,13 76:5 85:6	
146:11 151:10	<b>microfiche</b> 15:20	<b>municipality</b> 73:9	87:20 91:13,24	
<b>meant</b> 16:23 46:20	<b>microscope</b> 18:7,12	<b>muscle</b> 85:22 86:2	92:4 95:13 96:2,8	
151:10	62:4 104:11,14,21	86:20 101:15	96:16 98:1 99:15	
<b>mechanism</b> 33:18	<b>mid</b> 106:8	152:5,7	100:11 102:12	
79:8 111:18	<b>middle</b> 154:6	<b>muscles</b> 86:11,15	103:1,9,19 104:10	
149:12,15	<b>Mike</b> 66:23 93:17	<b>musculature</b> 152:20	107:15 108:1,8,18	
<b>medic</b> 2:16 70:2	<b>mild</b> 105:11		109:6 111:1 113:1	
<b>medical</b> 24:2,8,14	<b>Miles</b> 2:16	<b>N</b>	113:22 120:3	
24:17,20 25:2,5	<b>militate</b> 88:15	<b>naive</b> 119:6	122:2 125:7,11,18	
26:6,9 29:4 31:6	<b>milliliter</b> 119:18,22	<b>name</b> 5:8,9,10,11	126:1 127:11	
31:21 32:5,12	<b>millions</b> 97:22	14:14,14 15:1	129:2 131:24	
33:13 34:15,16	<b>mind</b> 25:18 34:5	27:3 51:9 55:8	133:4,5,16,20,23	
36:21,23 37:3,10	55:23 71:5 127:2	61:17,22 66:22	134:6 135:11	
37:12 40:24 41:9	144:9	67:3,3 77:9 127:6	136:4,15 137:7,20	
42:3,17 43:14,15	<b>mine</b> 134:9	128:3 159:6	139:15 142:18	
43:24 44:10 45:2	<b>minimum</b> 156:12	<b>named</b> 13:4 53:22	144:2 145:6,13	
45:7 50:7 55:12	<b>minute</b> 112:8	128:6 162:7	146:1 147:13	
55:17,24 58:18	140:24 142:5	<b>names</b> 29:16 67:5	148:6 150:8 151:3	
61:14,23 63:19,24	153:4	119:11	<b>objections</b> 11:22,23	
64:9 68:3 78:5,6	<b>minutes</b> 94:2 151:2	<b>naming</b> 87:13	12:2 133:19	
82:21 83:2 89:19	<b>mischaracterize</b>	<b>nanograms</b> 119:17	<b>obligated</b> 33:14,19	
89:23 90:5 99:9	135:10	119:22	33:19	
109:13 114:4,10		<b>NaphCare</b> 2:15	<b>obligation</b> 155:18	
			<b>observe</b> 73:24	

<b>observed</b> 107:1	106:22 107:20	<b>opinion</b> 20:4 32:11	<b>parameters</b> 12:6	104:4 105:1,5,7
<b>obtain</b> 156:10	120:16,23 129:7	32:20,23 34:4	<b>paranoid</b> 131:2	105:10,16 106:11
<b>obtained</b> 74:22	130:11 133:2	108:4 113:14	<b>parenchyma</b> 111:17	127:20,21 128:1
<b>obtaining</b> 61:2	148:15 150:18	119:20 121:16	112:23	128:11
<b>occasion</b> 19:1 65:24	151:23 152:1	130:11 140:20	<b>parent</b> 118:19	<b>percentage</b> 98:22
<b>Occasionally</b> 19:11	<b>Ohio</b> 1:1,15,16,22	143:5 147:7,23	99:20 127:8,17	
<b>occluded</b> 101:22,23	2:4,9,14 47:13,17	152:10 153:2	146:20	
104:7	47:22 143:15	<b>opinions</b> 51:16	<b>perfectly</b> 133:18	
<b>occlusion</b> 101:19	145:15 159:9	121:15 134:8	<b>perform</b> 17:5	
<b>occur</b> 144:5	162:2,6,17,21	<b>opportunity</b> 6:9 7:9	128:11	
<b>occurred</b> 143:3,4	<b>okay</b> 8:4 10:13,22	67:18 154:2	<b>performance</b> 64:1	
144:6,14 145:11	11:13 13:2 14:1,9	<b>options</b> 18:9	<b>performed</b> 56:16,21	
<b>occurring</b> 150:16	16:12 17:1,20	<b>order</b> 17:24 64:7	58:8 92:17 97:1	
<b>occurs</b> 82:22	18:6 22:7 23:2,10	<b>organizations</b> 35:6	<b>period</b> 38:4	
<b>odd</b> 43:1 116:19	23:20,21 24:12	35:11 58:14,20	<b>permanent</b> 47:14	
<b>odds</b> 34:17,19	26:12 29:11 30:1	<b>organs</b> 104:19	<b>permit</b> 67:13	
<b>offer</b> 18:10 95:17,20	31:2 32:4,24	113:11	<b>permitted</b> 21:13	
95:24	33:17 34:11 35:1	<b>origin</b> 145:21	67:24	
<b>offered</b> 18:23 53:20	36:1 38:7 39:4	<b>original</b> 17:21 18:3	<b>persistent</b> 112:23	
67:10 96:9	40:18 43:5 44:19	18:5,14,18 149:5	<b>person</b> 65:3 68:14	
<b>office</b> 6:17,22 8:24	44:22 45:3 46:13	149:21	71:14 72:15 80:11	
9:2 14:8,22 15:17	47:10 48:23 49:3	<b>outside</b> 8:2 17:21	86:7 88:17 105:24	
16:10 17:12,22	49:15 53:17 54:1	49:10 54:12 66:11	117:12 123:15	
18:17,19 19:2	55:10,23 57:20,21	75:8 97:2 110:1	<b>person's</b> 143:22	
20:12 21:5,18	59:22 60:20 63:10	124:3 126:22	146:12	
37:15 39:14 43:22	64:13 67:4 69:22	131:19 136:10,12	<b>personal</b> 13:7	
44:6,12,16 45:10	70:8 77:20 81:24	139:8 152:14	<b>personally</b> 13:3	
46:22,24 48:6,7	82:4 83:5,14 84:6	<b>overdose</b> 128:20,22	52:22,23 61:23	
48:13,18 49:5	84:21 88:11 89:20	128:24 129:3,8	66:8,9	
51:23 52:7 53:14	90:1 91:18 92:8	140:24 141:4,7	<b>pertinent</b> 13:18	
53:18 57:11 61:14	92:10 96:12 97:2	142:4,5,16,22	<b>Peter</b> 68:16	
64:5 65:9,21 66:5	99:10,11 103:16	143:6,6 144:1,7	<b>Phil</b> 1:8	
66:6,10,15 67:7	109:10,18 110:12	144:13,21,22	<b>phonetic</b> 123:2	
67:14 69:1,6,9	112:2,8,10 116:10	150:16 151:2	<b>photocopy</b> 14:18	
70:20 71:12 73:13	116:11 117:8,21	<b>overdosed</b> 140:21	<b>photograph</b> 16:17	
77:15,23 78:21	118:1,2,22 119:8	141:15,19 142:9	16:19,22,23 17:2	
79:1 93:16 94:20	121:14 123:1	<b>overdue</b> 140:18	68:8,11	
95:11 97:4 105:1	125:5 126:12,18	<b>overgeneralization</b>	<b>photographs</b> 15:24	
162:17	127:8 129:22	108:9	16:4,5,7,14 17:5	
<b>office's</b> 73:11	130:11 131:3,15	<b>overwhelming</b>	19:5,13 62:4	
<b>officer</b> 28:4,17 66:1	133:8 135:14	146:10	73:24 78:8,12,14	
71:17 73:6,6,7	137:3 139:9,12	<b>oxygen</b> 86:12,15,21	<b>photography</b> 48:11	
<b>officers</b> 27:7 58:1	140:1,13 143:3	88:10,19	<b>phrase</b> 33:17	
65:18 72:7 74:3,7	144:6,12 145:12	<hr/> <b>P</b>	141:23 145:2	
91:11,23 107:10	145:19,20,22	<b>p.m</b> 1:17 3:2 150:16	<b>phrased</b> 33:6 34:2	
107:13 108:13	146:10,15,20,21	158:8	<b>phrasing</b> 141:24	
113:19 114:15	147:2,4 148:5,15	<b>page</b> 4:4,8,8,9,9	<b>physical</b> 25:11 86:3	
115:8 116:22	148:19 149:16,19	159:5,8 160:6	<b>physically</b> 82:3	
147:8 150:7	150:22 151:6	161:7	<b>physician</b> 73:5	
<b>officers'</b> 26:13,16	152:5 157:13,21	<b>pages</b> 45:5	<b>physicians</b> 121:12	
27:5,15	<b>old</b> 100:2	<b>paginated</b> 77:18	<b>physiologic</b> 120:21	
<b>official</b> 3:8 10:1	<b>once</b> 18:16 21:10	<b>paid</b> 52:20	124:14,15,21	
11:4 42:7,10	22:1 25:15 34:9	<b>pain</b> 24:16	126:8,14 127:4	
46:21,23 61:21	71:3,19 75:17	<b>pair</b> 15:12 65:11	137:18 139:12	
64:14,17,18,18	105:10 128:22	<b>paper</b> 15:20 25:9,16	<b>physiologically</b>	
143:19	<b>one's</b> 61:1	30:11 46:17 77:3	136:13	
<b>Oh</b> 7:16 8:7,20	<b>ones</b> 27:22 146:22	78:18 156:19	<b>physiology</b> 33:18	
17:10 19:18 29:11	<b>online</b> 62:20	<b>paraffin</b> 17:15,18	<b>pictorial</b> 16:23	
35:5,15 38:7 52:1	<b>open</b> 156:9,14	<b>paramedic</b> 72:16,20	<b>picture</b> 146:10	
65:22 66:7 67:8	<b>Operations</b> 48:9	72:21	<b>piece</b> 78:18	
95:22 96:12 97:15	<b>opine</b> 122:4			

<b>place</b> 31:13 32:11 48:5 82:19 83:22 84:11 106:3 123:21 162:13	<b>possible</b> 70:6 71:15 71:16 157:10	<b>43:15</b>	<b>provided</b> 10:3 26:20 29:1	116:5 121:21 124:1 125:22
<b>placed</b> 10:12 80:13	<b>Possibly</b> 123:24	<b>probably</b> 5:19	<b>provider</b> 50:14	126:2,3 132:8
<b>Plaintiff</b> 1:6,14 2:5 3:5	<b>posterior</b> 101:8,14	20:16 26:21 29:8	<b>providing</b> 11:23	133:5,10,22 134:9
<b>Plaintiff's</b> 14:14,16 15:1 27:2 55:7 77:8 157:17	<b>postmortem</b> 24:21	33:4 34:9 37:1	51:16 89:23 90:5	134:23 135:4,16
<b>plaintiffs</b> 50:10	<b>potential</b> 30:5	40:11,12 47:14	96:12	137:9,13,21 138:1
<b>planned</b> 30:11	144:24	50:21,21 53:8	<b>proximal</b> 102:5,16	138:10,14,24
<b>planning</b> 148:22,23 154:7 155:20	<b>pound</b> 106:6	58:10 59:2,12,21	102:22 103:7,18	140:8,20 141:22
<b>plant</b> 147:3	<b>practice</b> 25:13,14	75:19 79:8 81:16	<b>Psychiatric</b> 35:20	141:24 142:15
<b>plaque</b> 104:7	26:1 35:12 47:11	94:16 106:4	<b>psychoactive</b>	146:3 150:23
<b>plaques</b> 107:5	47:16 48:3 49:24	109:21 110:10	118:10,16,20	<b>questions</b> 11:16
<b>playing</b> 146:12	50:9 62:15,21	124:16 141:7	119:15	12:17 23:1 51:20
<b>plays</b> 144:3	64:8 68:22 69:13	147:21	<b>psychotic</b> 121:3	70:6 79:3 92:9
<b>please</b> 5:8 15:11 22:23 40:18 109:17 125:21 132:4 137:9 146:1 154:2,22 159:3,8	69:18 90:8	<b>problem</b> 52:14	<b>public</b> 1:15 6:17	138:18,22 153:13
<b>Pleasure</b> 158:1	<b>practiced</b> 49:11	<b>problems</b> 138:12	11:3 18:10 19:8	<b>quick</b> 153:12
<b>plenty</b> 22:20	<b>practicing</b> 30:3	<b>Procedure</b> 1:15 3:6	20:9 64:13,18	<b>quickly</b> 157:10
<b>Plummer/Montgo...</b> 1:8	47:21 48:17 49:7	159:8	143:19 144:19	<b>quite</b> 75:7 133:12
<b>plus</b> 25:10	<b>predictable</b> 103:12	<b>process</b> 109:4	159:7 160:13,17	<b>quote</b> 42:9 46:12
<b>point</b> 15:23 51:23 53:10 56:17 71:23 76:7 102:9 104:1 137:17 147:18 149:17,20	<b>preexisting</b> 85:12 107:7 140:3	126:14 127:4	<b>publication</b> 62:4	<b>R</b>
<b>points</b> 140:4	<b>prefer</b> 82:6	131:5 150:12	<b>publications</b> 35:21	<b>R-A-E-Y-E</b> 29:15
<b>police</b> 73:6,7	<b>Pregon</b> 1:16 2:6,7 41:5 125:7 154:17 159:16	<b>processed</b> 79:1	<b>published</b> 30:14	<b>random</b> 71:1
<b>political</b> 34:21	<b>preparation</b> 14:7 42:21	<b>produce</b> 61:17	35:21 54:19,22	<b>range</b> 100:2 106:1
<b>population</b> 127:13 127:16	<b>prepare</b> 23:23 26:11 29:3	157:6	55:2 60:6 63:20	110:1,10
<b>portal</b> 40:3	<b>prepared</b> 47:1 51:8 155:12	<b>produced</b> 10:3	64:2 76:22	<b>ranges</b> 106:3
<b>portion</b> 59:6,15 102:16,18,23 103:4,8 105:4	<b>presence</b> 3:8 97:3 118:17 128:4 160:15 162:10	16:10 44:13 46:23 77:12,15 129:11 157:1	<b>puff</b> 120:2	<b>rare</b> 100:10,12
<b>position</b> 48:7,12 64:22 68:17 81:22 82:19 89:5 91:10 91:23	<b>present</b> 68:13 89:13 94:21,23 148:24	<b>producing</b> 156:6,7	<b>pulmonary</b> 109:19	<b>rarely</b> 18:2
<b>positional</b> 55:3 75:6 75:9,23 76:2,13 79:4,6,10,11,24 80:1,6,7,13 81:1,5 81:9,14,17,21 82:6,7 85:1,5,13 85:17,23 86:8,18 86:19 87:1,7,11 87:17,19 88:1,3,7 88:16,24 89:6,10 112:6,24	<b>presented</b> 70:10,12	<b>product</b> 14:8,16 15:9 16:5 36:11 42:12 45:10,14,16 45:19 77:23 119:2	109:21 110:21 111:8,17 112:3,4 112:23 113:5	<b>rate</b> 122:13
<b>positions</b> 40:12 48:17 49:10	<b>preserve</b> 17:8,14	<b>professional</b> 35:6	<b>purpose</b> 16:21	<b>reach</b> 19:1 152:11
<b>possibility</b> 113:24	<b>preserved</b> 105:1	48:16 49:10 54:11 58:13 66:14 159:13	143:24 144:18 151:13	<b>read</b> 27:4 30:12
	<b>pressure</b> 80:18,18 85:20	<b>professionals</b> 24:11	<b>purposes</b> 17:19	33:21 38:17 55:19
	<b>presume</b> 5:15 52:15 153:19	<b>prohibited</b> 6:13 20:12	<b>pursue</b> 59:8	56:11,13 116:6
	<b>presumption</b> 143:22	<b>prohibition</b> 21:7,19 22:10	<b>pursuing</b> 60:11	125:4 133:9,11
	<b>pretty</b> 70:23 78:7	<b>prohibitions</b> 22:8	<b>push</b> 152:6	134:9 143:2 146:3
	<b>prevent</b> 32:20	<b>prolonged</b> 113:7	<b>put</b> 31:14 33:14	159:3,6,8,10
	<b>prevention</b> 7:17 21:1	<b>promise</b> 26:17	109:5 124:2 133:1 143:5 144:8	160:4,13 161:2,4
	<b>primary</b> 118:19	<b>prone</b> 40:12 80:13 88:6 89:5 91:10 91:23	<b>puts</b> 85:4,23 135:6	<b>reading</b> 26:15
	<b>print</b> 40:14	<b>pronounced</b> 70:1 150:18 151:10	86:3 88:13	160:12
	<b>printed</b> 16:7 55:17 159:4	<b>proof</b> 3:8	<b>ready</b> 138:13	
	<b>prior</b> 20:18 24:20 25:19 30:3 36:23	<b>propensity</b> 128:9	<b>really</b> 33:17 70:16	
	38:6 71:16 90:3	<b>property</b> 16:1,2	87:13 118:20	
	90:15,20 91:6,9 91:21 130:1	<b>prosecution</b> 19:11	135:19	
	<b>privilege</b> 8:23 10:19 10:20 12:5,7 42:2 42:7,13	<b>prosecutor's</b> 8:24	<b>reams</b> 25:8,9	
	<b>privileged</b> 10:11	<b>prosecutors</b> 21:9	<b>reason</b> 18:1 20:18	
		<b>protections</b> 42:12 42:13	80:15 91:20	
		<b>protocol</b> 69:14	129:11,14 146:23	
		<b>protuberant</b> 80:11	154:5 161:7	
		<b>provide</b> 18:7 70:6 89:19 94:8 150:13	<b>reasonable</b> 31:6,15 31:21 32:5,12	
			33:12 106:4,4,5	
			109:12 114:4,10	
			114:13 115:5,18	
			116:20 117:14	
			118:3,6 119:20	
			129:13,15 130:11	
			136:11,19 137:3	
			137:15 139:5,11	
			140:6,20 141:14	
			141:18 142:8	
			<b>reasons</b> 36:4 98:3 161:5	

<b>Reay</b> 29:15 39:21	82:13 101:7	151:16 157:5,17	112:24 114:1,3,21	114:5,14 115:6
<b>recall</b> 14:3 16:19	<b>refers</b> 33:17	<b>representation</b>	114:23 115:7	117:15 119:4
26:15 28:2,4,8,10	<b>reflect</b> 155:12	16:24	130:20 131:22	124:24 126:16
29:16 33:5 38:9	<b>refresh</b> 55:18	<b>representative</b> 11:5	136:1,6,6 147:6,9	127:2 128:3,6,20
55:23 56:5 67:5	<b>regard</b> 13:9 38:21	18:2 19:7 20:11	147:12,16 150:6	129:7 139:4
69:2 89:14 90:9	42:14	21:20 67:9,17	<b>restraint-type</b> 29:5	140:21 141:10,15
90:11,18 91:2	<b>regarding</b> 8:15 20:5	<b>representatives</b>	<b>restrict</b> 80:23	141:19 142:9
94:17 95:19	24:13,16 29:4	20:9	<b>restriction</b> 20:17	144:19 145:4
126:15,17	111:16 151:5	<b>represented</b> 51:24	<b>result</b> 58:9 76:15	146:23 147:7
<b>receive</b> 27:23 54:17	<b>Regardless</b> 147:3	52:2 153:24	86:4 110:22 147:6	153:1
61:23 62:1,8	<b>regular</b> 65:24 66:2	<b>representing</b> 8:14	150:5,6 151:2	<b>Richardson's</b> 9:15
<b>received</b> 26:6 27:22	66:16,18	9:5 12:23 13:8	159:10	15:17 21:16 26:14
45:10,17	<b>regularly</b> 18:10	50:10,13	<b>results</b> 60:5	36:12 51:13 54:24
<b>receiving</b> 43:17	57:21 61:23 62:8	<b>represents</b> 5:24	<b>resuscitated</b> 129:3	68:6 69:1 73:3
91:21 152:4	62:20 98:2	<b>reprieve</b> 157:16	<b>retain</b> 25:12 50:20	79:21 93:13 95:18
<b>Recess</b> 40:21 140:15	<b>rejects</b> 81:8	<b>reproduce</b> 157:9	95:11	101:20 106:19,24
<b>recognition</b> 61:1	<b>release</b> 17:21	<b>request</b> 8:14 17:2	<b>retained</b> 50:17	107:14 108:16
<b>recognize</b> 34:22,23	<b>relevant</b> 9:22 43:13	18:13,18 78:23	104:18,22	110:15 111:10,21
34:24 35:7,23	<b>reliable</b> 38:22	92:20 161:4	<b>retaining</b> 110:19	112:21 116:21
83:7	<b>relied</b> 44:11	<b>requested</b> 10:2	<b>retire</b> 66:19	125:16,24 129:17
<b>recognized</b> 34:15	<b>rely</b> 37:5,7 45:12	15:22 27:21 93:1	<b>retrieve</b> 16:6 40:18	130:13,23 131:12
35:3 109:19	<b>relying</b> 42:13 73:15	<b>requests</b> 15:23,24	40:24 45:4,7 56:7	137:19 139:13
<b>recognizes</b> 34:17	<b>remaining</b> 102:18	15:24 18:20	56:9 57:7	<b>right</b> 5:22 6:18,19
35:18	104:7 106:12	<b>require</b> 86:12	<b>return</b> 159:8	8:7 11:19 12:9
<b>recognizing</b> 35:12	<b>remember</b> 21:19	<b>required</b> 60:15	<b>returned</b> 150:2	17:8,13 20:4
35:12 100:9	26:12,14 27:1,6	68:20,23	<b>review</b> 17:23 23:23	22:20 23:5 27:13
<b>recollection</b> 25:17	41:2 51:10 90:22	<b>requiring</b> 136:5	24:8,19 25:5,9	28:24 35:20 39:16
25:21 55:18 69:16	91:19 94:23,24	139:24 147:9	26:10 36:22 37:18	40:17 43:19 44:3
<b>record</b> 5:12 9:24	102:9 112:15	<b>reschedule</b> 155:23	37:23 38:3 42:23	52:15,24 53:11,16
10:1 11:23 12:1	128:8	<b>rescheduled</b> 155:6	45:24 50:6 54:5	57:9,14 58:4
18:22 22:19 23:1	<b>REMINGER</b> 2:12	<b>research</b> 30:11	54:20,22 55:2	59:23 63:2,5,13
24:14 27:10 40:23	<b>remove</b> 41:15 42:1	54:18 64:9	68:3 77:13 89:16	69:7 72:9,18 73:8
41:23,24 114:12	<b>removed</b> 13:11	<b>researched</b> 52:7	90:2,3,13,19	73:14 74:2 78:12
133:3,4 135:10	41:10 43:2	<b>resistance</b> 129:12	<b>reviewed</b> 24:1,2,14	78:20 79:2,13
140:17 142:20	<b>rendering</b> 80:2	<b>resource</b> 62:14	24:17 25:18,19	80:22 81:3 82:12
143:19 153:3,5	<b>repeat</b> 32:3 49:3	<b>resources</b> 25:12	26:1,2,6,10 27:8	82:17 83:24 84:13
155:4,11 156:22	137:9	62:20	27:16,18,20,21	84:14,16,18,21
157:4 161:5	<b>rephrase</b> 31:24 32:3	<b>respect</b> 13:8 84:18	28:9,17,18,22	85:19 86:5,13,17
<b>records</b> 24:2,8,17	126:3 133:22	112:22 121:15	29:2 36:22 37:3	87:4 91:8 92:12
24:20 25:2,6,9,18	137:22 138:7	138:4 139:3	38:10,18,20 39:22	92:16 93:14 94:7
26:2,7,9 45:2,8,15	<b>rephrasing</b> 132:17	140:18	45:12 52:24 56:5	95:6 97:1,20 98:6
45:15 51:18 68:4	<b>report</b> 10:3 14:19	<b>respective</b> 3:5	68:4 91:18 92:8	100:21,24 101:3,6
78:6	14:21,21 16:1	<b>respiratory</b> 85:22	<b>reviewing</b> 25:22	101:10,11,18,21
<b>recut</b> 17:19	24:22 25:6,15,20	86:2 111:18,22	26:12 28:4 51:18	104:15 105:2,6,9
<b>recuts</b> 17:24 18:2	26:3 27:9 28:18	112:1,3,9 113:9	77:19 90:11,23	105:14 106:14,17
18:11,13,18	31:3,7 32:11,16	<b>responsibility</b>	<b>reviews</b> 54:13	106:24 107:9
<b>recycle</b> 25:16	33:1,15,22,24	153:13	<b>rhythm</b> 140:7	109:2,24 110:5,7
<b>redacted</b> 45:21	34:8 36:24 55:19	<b>responsible</b> 90:4	<b>rib</b> 80:19	110:12,16,17
<b>reduced</b> 3:7	64:24 69:24 70:5	<b>restrained</b> 82:3,3	<b>Richardson</b> 1:5	111:7 112:12,14
<b>refer</b> 39:5,16 46:1,3	74:24 90:15,19	88:23 107:17	5:21,24 6:14	118:19 120:17
62:21 63:13,15,17	91:4,21 94:15	109:5 130:1 137:2	14:19 24:3,9 28:1	123:8 124:9,12
69:16 101:24	124:6 129:18	139:24	30:24 31:10,22	128:20 132:13,18
109:17	<b>reported</b> 69:23 83:2	<b>restraint</b> 40:11,11	32:6 33:13 36:16	132:20 137:1
<b>reference</b> 14:15	114:23 123:17	55:5 71:6 76:3,4	51:24 52:7 58:5	138:11,16 143:18
<b>referenced</b> 69:4	<b>reporter</b> 48:22	76:10,15,19 79:4	58:11 68:10 72:4	150:4,11,13 151:8
<b>referencing</b> 41:18	159:13 161:1	81:4,21 82:1,18	73:12 74:11,17	151:18 152:7
<b>referred</b> 38:17	<b>reporting</b> 72:19	82:20,21 83:1,4	79:15 89:13 91:5	<b>rise</b> 120:10
41:10 45:2	<b>reports</b> 15:12 26:13	83:11,16 84:18	91:22 92:15 93:4	<b>risk</b> 80:1,5,7,12
<b>referring</b> 15:8	26:15 50:16 66:3	85:2,10,13,17	93:9 100:17	85:1,4,5,12,13,16
41:18 44:20 70:19	90:24 125:4	87:1,5,16,19 88:6	101:24 105:20,24	85:17,20,22,23
71:6 81:7,22 82:2	126:23 150:2	108:15 109:1	108:14 113:19	86:7 87:1 88:13

roach 122:11	screener 51:18	show 16:11 27:2,15 54:18 93:20 94:19 151:17	148:22	89:14
road 117:18 126:6	seal 162:17	showed 19:5 93:21	son 39:11	states 1:1 47:19
<b>Robbins'</b> 63:16	search 40:5,10 57:6 57:12,18 126:23	showing 88:22 90:12,21 143:10 143:15 154:19	soon 138:1	127:9,12
<b>Robert</b> 1:5 2:12 5:21,24 14:19 24:2 51:24 73:12	searched 57:13,20 57:20	shrugs 22:21	sooner 47:5	statistics 143:3,16
100:17 124:24 146:23	searches 37:17 62:22	sic 29:15	sorry 44:17 48:20 82:11 91:17 104:17 123:12	stay 64:7,8
<b>role</b> 144:3 146:12	searching 56:23	side 101:7 156:10	140:13 142:24	stayed 48:5 49:6 96:15
<b>rolling</b> 68:10	second 15:14 28:22 59:18 93:23 121:20 153:20	sign 87:6,10 88:2,6 88:12,24 89:9 148:13 159:3,6,8	sorted 47:5	stenosed 102:15
<b>room</b> 18:7 19:4 25:3 41:4,11	section 16:18 60:9 104:11,23	signature 158:5 159:8 161:23	sought 58:23	stenosis 102:3 104:9 104:13
<b>rule</b> 34:5	sections 104:5,8,18	signed 14:18,19 25:15 142:23	sound 114:8	stenotype 162:10
<b>ruled</b> 32:19 69:19 147:20 148:9,17 149:5	see 13:7 20:23 32:23 45:20 47:7 52:14	144:20 159:10 160:14	sounds 49:4 53:3,9 72:10 87:5	stenotypy 3:7
<b>rules</b> 1:15 3:6 22:19 83:21 84:4,9 146:8 159:8	57:19 69:3 76:7	<b>significant</b> 140:5	<b>source</b> 29:7 40:3	step 71:4,12
<b>ruling</b> 146:24	77:16 96:21 98:2	<b>signing</b> 25:19 90:15 160:12	<b>sources</b> 38:22 72:3	stepped 41:4
<b>runs</b> 101:9,14	99:17 105:16	<b>signs</b> 88:5,8,14,22 89:12	<b>SOUTHERN</b> 1:1	steps 69:21
<b>Russell</b> 6:22	113:8 117:11	<b>similar</b> 35:21 51:13	<b>SPANGENBERG</b> 2:3	<b>Steven</b> 2:16
<hr/>				
<b>S</b>				
<b>sample</b> 62:1	seeing 158:2	<b>simple</b> 157:2	<b>speak</b> 6:10,15,24 74:6	<b>stick</b> 119:7
<b>samples</b> 17:14	seek 11:14 59:1,20 61:10	<b>Sincerely</b> 159:12	<b>speaking</b> 11:23 12:2	<b>stipulated</b> 3:4
<b>sat</b> 12:11 19:4 59:22	seen 43:3 78:23 83:8 100:6	<b>single</b> 16:17 128:3	<b>source</b> 29:7 40:3	<b>STIPULATIONS</b> 3:3
<b>saved</b> 17:19	<b>seizure</b> 114:24	<b>sit</b> 18:4 28:3,8 59:15 60:19 94:3 127:1 138:12	<b>sources</b> 38:22 72:3	<b>Stockhauser</b> 2:16
<b>saw</b> 16:17 44:6,7 68:8 74:1,11 151:16	<b>selected</b> 70:14	<b>sitting</b> 20:13 39:17	<b>SOUTHERN</b> 1:1	<b>stop</b> 53:20 133:24
<b>saying</b> 15:24 20:23 25:24 32:21 34:10 34:21 75:23 80:11 87:12,14 96:21 111:15,23 116:20 120:12 121:18 123:20 126:19 128:23 130:10,19 131:20 135:16 139:20,23 140:2 144:14 145:7 155:16	<b>sense</b> 16:13 128:15 145:3	<b>situation</b> 20:11 34:2 118:23 123:22 141:2	<b>SPANGENBERG</b> 2:3	148:13 153:16
<b>says</b> 5:3 77:8 78:2 92:8 129:18 135:5	<b>separate</b> 54:3 57:4	<b>six</b> 44:4 53:7 106:5 119:4	<b>specifically</b> 70:19 72:4 99:15	<b>stopped</b> 53:9
<b>scan</b> 25:12	<b>sequentially</b> 77:11	<b>size</b> 105:15,18	<b>specified</b> 162:14	<b>stopping</b> 137:19
<b>scenario</b> 67:23	<b>serial</b> 104:5,8	<b>sized</b> 105:9	<b>Speeding</b> 120:24	<b>stops</b> 108:7 133:21
<b>scenarios</b> 147:22 150:13	<b>services</b> 89:19 91:3 91:17	<b>slide</b> 105:3,4	<b>spell</b> 5:8	<b>story</b> 71:14
<b>scene</b> 70:3 74:7	<b>Session</b> 3:1	<b>slides</b> 17:5,8,19,21 18:1,3,5,12,14,18 78:5	<b>spelling</b> 29:13	<b>straightforward</b> 33:23
<b>schedule</b> 148:23 153:23	<b>set</b> 6:16 154:15 162:16	<b>Slightly</b> 110:3	<b>Spitz</b> 38:19,21 39:9 39:9,16	<b>Street</b> 2:13
<b>scheduled</b> 153:17 153:18 155:7	<b>sets</b> 24:19 25:5	<b>Smiley</b> 155:8	<b>splitting</b> 151:5	<b>strenuous</b> 147:19
<b>scheduling</b> 153:8,9 157:11	<b>setting</b> 22:18 60:18 82:1 122:14	<b>smoke</b> 122:11	<b>Sr</b> 1:5	<b>stress</b> 109:5 147:5 150:6
<b>School</b> 54:16	<b>settings</b> 60:23 82:8	<b>smoked</b> 119:4 145:9	<b>staff</b> 25:12	<b>stressor</b> 107:21
<b>Sciences</b> 58:18 61:17	<b>settled</b> 51:8	<b>smoking</b> 124:4 139:13	<b>stake</b> 12:5	109:8,12 126:20
<b>scope</b> 7:22 52:9	<b>severe</b> 105:7	<b>society</b> 97:10	<b>stamps</b> 77:9	129:10 136:7,16
<b>score</b> 60:8	<b>shackles</b> 82:3	<b>solely</b> 143:7	<b>stand</b> 122:14	136:20
	<b>share</b> 11:5 13:17 37:11	<b>Sollenberger</b> 93:18	<b>standard</b> 17:6	<b>strike</b> 43:6 138:20
	<b>sheet</b> 16:1 159:5,6,9	93:19 94:5,8,22 95:17,24 96:13,15	<b>standards</b> 64:1	<b>strong</b> 130:2
	<b>Sheriff</b> 1:9 2:9 6:2	<b>somebody</b> 7:18	<b>start</b> 22:18 49:14 66:8 68:15 77:10 153:10	<b>struggle</b> 86:20 88:5 89:5 108:14 115:7
	<b>sheriff's</b> 21:18 66:5 66:5,9,15 67:6,14 69:1,5,9 73:10,13 93:15 97:3	<b>SHIBLEY</b> 2:3	<b>started</b> 41:3 126:6 134:2	<b>struggling</b> 86:7,11 109:4
	<b>short</b> 152:12	shortly 152:10	<b>starting</b> 74:17	<b>studies</b> 122:17
	<b>shoulder</b> 135:6,12 135:13	<b>shoulder</b> 135:6,12	<b>Starts</b> 2:11 159:15	<b>stuff</b> 55:18 82:10
			<b>state</b> 1:15 5:8 9:24 47:17 54:16 114:11 115:17	<b>stumble</b> 119:10
			<b>subpoena</b> 14:2,3 156:17	<b>stumbling</b> 117:17
			<b>subpoenaed</b> 44:9	<b>subject</b> 42:2 95:2 156:22 157:6
			<b>subscribe</b> 61:13,14 81:4	<b>submitted</b> 71:20 104:11,20 105:4 160:11
			<b>substance</b> 77:14 141:6,9 160:6	<b>substantial</b> 128:12 132:23

<b>subtle</b> 85:2	<b>syringe</b> 96:21	122:4 141:1,4	107:16 112:6,19	<b>tissue</b> 17:14,18 18:1
<b>sudden</b> 139:17	<b>system</b> 56:24 70:16	142:4	113:21,24 122:8	152:20
152:7	103:3 122:9	<b>terminal</b> 79:10,14	123:2 126:9,15	<b>tissues</b> 86:15,20,20
<b>sue</b> 53:17	126:23 152:8,9	108:6	128:24 131:1	<b>title</b> 42:9 61:20
<b>sued</b> 53:14,15	<b>T</b>	<b>terminology</b> 33:20	132:1,20 133:16	<b>today</b> 5:13 6:6,10
<b>suffer</b> 79:5	<b>table</b> 10:12 15:23	35:13 128:22	133:18,19,22	10:6 12:13,20
<b>suffered</b> 102:1	<b>tactic</b> 8:1	<b>terms</b> 17:4 40:10	134:6,6 138:17	13:22 14:7 15:18
<b>sufficient</b> 73:16	<b>take</b> 16:14 22:22	41:19 78:6 79:24	140:23 141:1	23:2,11 28:3,8
<b>suggest</b> 12:8	23:17,19 40:19	85:3 101:22	142:12 143:2	47:1 56:13 108:12
<b>suggested</b> 36:15	55:14 96:7 133:11	<b>test</b> 59:22 60:9	147:6,16 151:19	124:1 127:1
<b>suggestion</b> 154:12	133:15 135:19	<b>tested</b> 119:12,23	152:2 154:11	148:23 153:11,16
154:14	138:2,4 153:10,11	151:22	<b>third</b> 59:22 98:17	153:21 154:1,18
<b>suicide</b> 145:16	153:12 154:15	<b>testified</b> 45:12	155:15 157:1	155:15 157:1
146:19	<b>taken</b> 1:15 3:6 5:13	<b>testify</b> 23:14 42:19	<b>today's</b> 13:18 23:22	
<b>Suite</b> 1:16 2:4,8,13	5:20 17:3 40:21	42:20 51:6 162:8	24:9 26:2,11	
<b>sum</b> 77:14	68:11 140:15	<b>testimony</b> 111:20	28:18 29:3 36:22	
<b>summaries</b> 39:23	161:2 162:9,13	132:23 157:5	38:12 39:17 41:2	
90:11	<b>takes</b> 70:22 120:10	159:4,5,6 162:9	68:5	
<b>supplemental</b> 88:10	149:19 152:8	162:12	<b>told</b> 8:5,8,9 9:24	
88:19 142:23	<b>talk</b> 8:5 11:24 20:20	<b>testing</b> 131:16	12:11,13 19:24	
149:14	21:10,13 72:7	<b>text</b> 30:12 37:24	20:3,5,5 26:9	
<b>Supplementary</b>	76:23 128:7 134:2	38:15,16 39:5,7	36:21 42:19 43:12	
143:16	154:21	39:16,19 63:16,17	54:12 63:12 67:14	
<b>supply</b> 93:2 101:15	<b>talked</b> 21:11 39:19	<b>textbook</b> 123:2	75:2 79:5 87:18	
<b>support</b> 150:17	46:21 72:15 78:5	<b>textbooks</b> 37:15,18	112:6 135:9	
<b>supposed</b> 12:17	78:8 106:11	37:21 38:2	144:18 147:16	
156:5	<b>talking</b> 9:14 60:4	<b>texts</b> 38:13,18 39:20	153:15 156:6,11	
<b>sure</b> 15:22 18:21	72:10 82:16,18	63:12	<b>tomorrow</b> 149:1	
19:18,22 23:3	88:12 115:3	<b>thank</b> 71:8 84:7	154:16 157:9	
24:6,7 25:24	118:11 121:14,19	92:14 158:1,3	<b>top</b> 44:5 80:17 82:9	
26:19,23 28:12	124:5 127:18	<b>THC</b> 117:11 118:19	<b>topic</b> 16:13 19:23	
29:9 32:1,2,14	134:2 155:2	119:17	62:6	
35:17 39:6 40:20	<b>talks</b> 74:6	<b>theory</b> 81:3,4,6,9	<b>topics</b> 54:23 148:20	
51:22 52:13 62:24	<b>technician</b> 68:19	<b>thick</b> 9:11 43:24	<b>total</b> 101:19	
63:24 65:22 66:7	<b>tell</b> 15:11 21:10	99:7	<b>totally</b> 101:23	
67:22 72:6 75:17	23:5 24:1 29:8	<b>thickened</b> 98:3	<b>toxic</b> 120:6,10,12,18	
76:1,7 81:12	31:22 32:6 38:13	<b>thin</b> 12:4	120:18,20,21	
82:13,23 83:3	42:20 77:13 94:11	<b>thing</b> 17:6 20:10	121:3,6,9,16,19	
86:1 87:15,24	96:24 97:12 101:3	28:15 60:17 69:22	121:20,23 122:1,4	
88:21 89:11 94:10	112:13,15 115:11	88:16 91:1 110:21	122:7,9,15 141:23	
95:22 100:12	116:1 118:24	113:6 116:14	142:12 145:1	
101:16 102:19	119:3 122:12	120:19 121:22	151:12	
104:19 106:22	127:13 134:14	131:13 144:8	<b>toxicologist</b> 121:23	
107:20 109:1,15	138:3	<b>things</b> 15:19,21	121:24	
122:21 126:3	<b>telling</b> 42:22 54:10	18:10 19:6 30:12	<b>toxicologists</b> 122:3	
133:13 134:23	96:5 104:23 105:3	34:18,20 42:20	<b>toxicology</b> 14:21	
140:18 143:9	108:12 111:12	49:8 64:11 78:24	131:16 149:19	
154:21	113:18 122:8	87:13 96:17 113:8	150:2 151:16	
<b>surgery</b> 154:9	133:17,22	128:19 131:17	<b>toxin</b> 140:3	
<b>surprised</b> 114:22	<b>ten</b> 45:5 50:21,22	153:14	<b>training</b> 47:13	
115:1 127:19,23	75:20,22 76:13	<b>think</b> 5:18 9:10	<b>transcribed</b> 3:7	
<b>surrounding</b> 53:12	83:3 87:22 154:7	12:12,20 21:10	162:11	
83:22 84:1,11,22	154:9	24:14 26:17 28:16	<b>transcript</b> 22:21	
95:8	<b>tend</b> 17:22	29:14 33:9 36:4	159:3,3,6,10	
<b>survival</b> 152:12	<b>tends</b> 18:15	38:15 41:23 43:14	160:4,10 161:2	
<b>susceptible</b> 86:24	<b>term</b> 32:15 33:1,8	44:23 51:19 63:7	162:12	
<b>switch</b> 148:20	33:11,16,17,19	63:12 64:17 67:14	<b>trauma</b> 146:16	
<b>sworn</b> 5:2 162:8	34:3,6,7 36:10	72:7 75:2 76:18	<b>treading</b> 12:4	
<b>symptom</b> 87:6	76:10 82:6 99:9	84:9 87:18 92:12	<b>tree</b> 103:5 124:5	
<b>symptoms</b> 88:14	89:12	94:2 97:12,12	<b>trial</b> 51:6	
	117:9,16 120:20	103:10,11 106:7	<b>tried</b> 36:4	

<b>trouble</b> 88:6,8,23 109:15 <b>true</b> 6:14 12:14,15 28:4 33:15 37:8 41:21 78:21 79:7 79:15,22 80:8 81:15 82:22 84:23 85:14,18 86:4,8 86:12,18 87:7,11 88:3,18,24 89:6 89:13 93:5,13 98:13,16 100:21 101:17 102:18,24 103:2,8 105:8,11 105:19 107:3,14 108:7,16 109:3,5 111:18 112:24 115:8,18 119:15 124:8,24 125:1 132:8,11 142:7,7 147:8 149:22 160:7 162:11 <b>truth</b> 162:8 <b>try</b> 35:2 60:2 64:3 77:3 <b>trying</b> 12:8 34:12 38:2 46:2,16 89:4 100:15 113:8 114:8 116:12 122:6 126:6 133:1 142:3,3 153:8 155:10,16 157:3 <b>tuned</b> 137:8,8 <b>turned</b> 43:19 <b>TV</b> 19:4 <b>twice</b> 18:16 34:9 <b>two</b> 11:22 15:13,14 24:19 41:5 44:1 44:19 63:4 76:7 91:5 94:9 123:2,6 131:17 134:20 139:18,20 140:4 154:5 155:20 <b>two-sided</b> 77:17 <b>type</b> 62:22 71:6 100:7 114:20 115:15 <b>typed</b> 15:15 <b>types</b> 24:16 <b>typewritten</b> 159:4 <b>typical</b> 42:21	<b>U</b> <b>Uh-huh</b> 28:5 49:19 59:14 67:1 95:4 <b>uh-huhs</b> 22:22 <b>ultimately</b> 16:10 19:13 79:5 108:6 <b>uncommon</b> 57:1 <b>underlying</b> 149:14 <b>underneath</b> 15:2	<b>27:3</b> <b>undersigned</b> 160:13 <b>understand</b> 5:12,19 5:19,23 6:4 8:13 11:8,11,17 23:2,4 23:11,13 29:20 32:1 33:8,24 34:1 38:2 71:7 73:19 111:9 112:16,19 115:17 121:14 122:16 131:20 134:23 135:4,23 137:21 143:9,11 144:8 148:2 <b>useful</b> 95:9 <b>users</b> 119:6,6 <b>usual</b> 90:8 <b>usually</b> 8:5 60:7	<b>62:5 75:7 126:11</b> <b>V</b> <b>vague</b> 99:16 103:19 <b>varies</b> 62:5 <b>vary</b> 119:6 <b>varying</b> 24:16 <b>vasculature</b> 101:8 104:6 106:12 <b>vehicle</b> 128:19 148:17 <b>vein</b> 39:2 <b>ventricle</b> 16:24 98:3 <b>ventricular</b> 97:9,14 97:22,23 98:9,10 98:23 99:3,6 <b>verbalizes</b> 89:8 <b>versions</b> 154:22 <b>versus</b> 38:3,13 <b>video</b> 92:8,9,11,20 93:5,16,20,22 94:1,3,9,15,19 95:2,21,24 96:6 96:17,20 97:2 149:22 <b>view</b> 18:14 <b>viewed</b> 96:15 <b>viewing</b> 94:22 <b>views</b> 61:4 <b>Vincent</b> 29:17 33:20 <b>Vine</b> 2:13 <b>violate</b> 84:4 <b>visit</b> 25:3 <b>visits</b> 24:15 <b>vital</b> 143:3,16 <b>voice</b> 20:19 <b>volunteer</b> 54:15 <b>vs</b> 1:7	<b>wanting</b> 40:19 <b>wants</b> 17:23 <b>wasn't</b> 7:11,14 8:8 41:24 43:19 68:12 71:6 104:20 107:11 124:19 147:24 153:24 <b>waste</b> 155:3 <b>watch</b> 18:5 93:16,23 94:3,15 97:2 <b>watched</b> 94:1,6 <b>watching</b> 93:5,12 94:9,12 <b>way</b> 5:18 12:8 25:11 31:14 32:22 33:6 34:2 56:23 77:11 77:18 86:3 109:22 111:14,15 112:21 114:6 121:23 126:23 139:6 141:24 144:7 155:11 <b>ways</b> 37:9,13 63:4 72:20 94:13 <b>we'll</b> 22:24 23:19 47:4 49:1 138:2 154:22 156:13 157:19 <b>we're</b> 12:4 16:13 40:23 44:17 47:6 60:4 68:22 70:7 82:18 88:12,13 115:3 118:20 121:18 138:3 140:17 143:9 154:2,23 155:22 156:7,14,19 <b>we've</b> 10:3 11:22 23:7 39:19 46:21 106:11 131:9 133:12 155:7 <b>week</b> 56:10,13 156:5,7,11 <b>weeks</b> 107:2 149:18 155:4 <b>weigh</b> 110:5 <b>weight</b> 80:16,17 105:22 110:2,5,7 110:11 111:16 <b>went</b> 19:5 73:19 89:12 94:17 <b>weren't</b> 7:16 126:14 148:23 150:2 154:7 <b>Werner</b> 39:9 <b>WESTERN</b> 1:2 <b>WHEREOF</b> 162:16 <b>Whitney</b> 1:15 3:6 159:9,13 162:5,20 <b>widely</b> 106:13 <b>widowmaker</b>	<b>X</b>	<b>Y</b>	<b>yeah</b> 17:17 22:14
--	--	--	--	--	----------	----------	-------------------------

31:18 32:2 37:22 39:1 40:6,9 43:1 46:8,17 58:17 62:12,24 63:7 66:12 68:15 71:8 75:15,17 77:1 82:16 84:7 90:17 94:4,13,13 96:23 107:5,19 120:13 120:15 122:20,24 129:7 130:18 132:13 135:7 147:18 150:9 151:23 157:19 <b>year</b> 49:17 50:24 51:1 53:4 59:11 59:12 <b>years</b> 18:16 25:23 30:19 33:3,4 34:1 38:17 39:8 47:23 53:8 66:18 96:10 100:2 <b>Yep</b> 65:14	<b>2:26</b> 1:17 3:2 <b>20</b> 94:2 100:3 161:3 <b>2002</b> 47:15,23 <b>2004</b> 48:2,3 49:9 59:2,9 <b>2005</b> 59:13 <b>2006</b> 59:21 <b>2010</b> 24:15 25:3 45:6 <b>2012</b> 15:20 34:3 36:24 38:9 56:5 91:4 92:12,13 107:13 114:5,16 115:6 116:23 129:17 149:21 <b>2015</b> 1:16 3:1 159:1 160:5,15 162:18 <b>2020</b> 162:22 <b>20th</b> 92:13,14 <b>21st</b> 91:4 92:12 <b>25th</b> 93:7,9 149:21 <b>28</b> 100:2,4 <b>28-year-old</b> 106:6 110:7 <b>280</b> 106:6	<b>5335</b> 1:16 2:8 <b>55</b> 4:9 <hr/> <b>6</b> <b>605</b> 110:16 <b>614-309-1669</b> 1:22 <b>6723</b> 1:21 159:9 <b>695</b> 110:15 <hr/> <b>7</b> <b>7</b> 1:16 3:1 160:5 <b>75</b> 102:2,15 103:4 103:24 104:3,24 105:5,7,10,16 106:11 <b>77</b> 4:9 <hr/> <b>8</b> <hr/> <b>9</b> <b>9</b> 90:22	
<hr/> <b>Z</b> <hr/> <b>Zero</b> 58:3	<hr/> <b>3</b> <hr/> <b>0</b>		
<hr/> <b>04</b> 60:12 <b>05</b> 60:12 <b>06</b> 60:12	<hr/> <b>3,700</b> 56:17,19 75:3 126:22 <b>3:14-CV-00158</b> 1:7 <b>3206</b> 77:10 <b>3210</b> 143:15 <b>3293</b> 77:11 <b>33</b> 143:2 <b>350</b> 110:10		
<hr/> <b>1</b> <b>1</b> 4:8 14:11,14,16 27:2 41:6 44:10 44:20 <b>1,600</b> 25:9 <b>10</b> 90:22 <b>1001</b> 2:3 <b>11-carboxy-Tetra...</b> 118:12 <b>117</b> 1:16 <b>123</b> 2:8 <b>14</b> 4:8,8 159:1 <b>143</b> 90:13 <b>144</b> 90:13 <b>146</b> 90:13 <b>14th</b> 162:17 <b>16</b> 119:17,22 <b>16:00</b> 151:9,11,12 151:14 <b>16:08</b> 150:19 <b>1700</b> 2:4,13 <b>19-year-olds</b> 100:6 <b>19th</b> 107:13 114:5 114:16 115:6 116:23 129:17	<hr/> <b>4</b> <b>4</b> 4:9 77:5,8 78:7,19 162:22 <b>4,000</b> 125:4 <b>4:00</b> 150:16,20 <b>400s</b> 106:8 110:9 <b>43017</b> 1:22 159:9 <b>44114</b> 2:4 <b>45202</b> 2:14 <b>45429</b> 1:16 2:9 <b>4th</b> 157:17		
<hr/> <b>2</b> <b>2</b> 4:8 15:1,3,11,12 41:6 44:10,20	<hr/> <b>5</b> <b>5</b> 4:4 <b>5:00</b> 133:14 <b>5:24</b> 148:21 <b>5:30</b> 154:3,24 155:5 155:15,19,22 <b>5:34</b> 158:8 <b>50</b> 97:13 127:20,21 128:1,11 <b>500</b> 110:10 <b>525</b> 2:13		